

**CASE**

**NUMBER:**

99-193

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-193

**FILED**

SEP 22 1999

PUBLIC SERVICE  
COMMISSION

RE: MARTIN COUNTY WATER DISTRICT

Pursuant to notice duly given, the above-styled matter came to be heard September 9, at 10:00 a.m. in the Hearing Room of the Kentucky Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601; The Honorable Paul Shapiro presiding.

C O P Y

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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 99-193

RE: MARTIN COUNTY WATER DISTRICT

APPEARANCES:

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Hearing Officer  
PUBLIC SERVICE COMMISSION

Hon. Gerald Wuetcher  
Legal Counsel  
PUBLIC SERVICE COMMISSION

Hon. Earl Mickey McGuire  
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Legal Counsel  
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JOHN F. CRUM

Hon. Eldred Adams  
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MARTIN COUNTY WATER DISTRICT

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1 HEARING OFFICER SHAPIRO:

2 This is a hearing before the Kentucky Public  
3 Service Commission in the matter of Benton F.  
4 Crum, Derle Walker, Mark Bowden, and John F. Crum  
5 complainant versus Martin County Water District,  
6 Case Number 99-193. My name is Paul Shapiro and  
7 I'm a hearing examiner for the Commission and I've  
8 been asked to conduct this hearing this morning.  
9 Let me see if we have everybody here. Is Mr. Crum  
10 here today?

11 MR. MCGUIRE:

12 Mr. Crum is here, Derle Walker is here, Benton  
13 Crum and John Crum is here, Martin Bowden is not  
14 here.

15 HEARING OFFICER SHAPIRO:

16 Are you representing them?

17 MR. MCGUIRE:

18 I'm Earl McGuire and I represent the two Crums and  
19 Mr. Walker. Mr. Bowden has asked to withdraw his  
20 complaint. Because of religious convictions he  
21 has asked his part of it--

22 HEARING OFFICER SHAPIRO:

23 Is Mr. Bowden here?

24

1 MR. MCGUIRE:

2 Mr. Bowden did not come.

3 HEARING OFFICER SHAPIRO:

4 Okay, well he is not here then.

5 MR. MCGUIRE:

6 No, and I do not represent Mr. Bowden.

7 HEARING OFFICER SHAPIRO:

8 Do we have anything from Mr. Bowden indicating  
9 that he wished to withdraw his complaint in the  
10 record?

11 MR. WUETCHER:

12 I've not seen anything in the record to indicate  
13 that.

14 MR. MCGUIRE:

15 I think he simply asked that I make that request.

16 HEARING OFFICER SHAPIRO:

17 And who is here repre--do we have the Martin  
18 County Water District present?

19 MR. ADAMS:

20 Yes, Your Honor, I'm Eldred Adams, commonly known  
21 as Bud Adams, I represent the Martin County Water  
22 District. And we have the superintendent here for  
23 the Water District.

24

1 HEARING OFFICER SHAPIRO:

2 Well, that's fine. And let me get appearance of  
3 counsel at this time. Who is appearing on behalf  
4 of the applicants?

5 MR. MCGUIRE:

6 Earl Mickey McGuire, I'm from Prestonsburg,  
7 Kentucky and I represent Benton Crum, Derle Walker  
8 and John F. Crum.

9 HEARING OFFICER SHAPIRO:

10 And Mr. McGuire what is your address?

11 MR. MCGUIRE:

12 181 East Court Street, Prestonsburg, Kentucky  
13 41653.

14 HEARING OFFICER SHAPIRO:

15 And who is here on behalf of the Water District?

16 MR. ADAMS:

17 My name is Eldred Adams, E-l-d-r-e-d Adams,  
18 A-d-a-m-s, Jr., commonly known as Bud to make it  
19 easy. My address is Post Office Box 606, Louisa,  
20 L-o-u-i-s-a, Kentucky 41230.

21 HEARING OFFICER SHAPIRO:

22 And on behalf of the Commission Staff?

23 MR. WUETCHER:

24 On behalf of the Commission Staff, Gerald

1           Wuetcher.

2       HEARING OFFICER SHAPIRO:

3           I've read the file and I'm familiar with the  
4       complaint and the response so I don't think--there  
5       will be no need for an opening statement. As a  
6       practical matter, the Commission generally  
7       requests that open statements not be made because  
8       we are familiar with the hearings--with the issues  
9       before the hearing begins. So, at this point,  
10      I'll ask Mr. McGuire if he has any evidence he  
11      wishes to present to the Commission?

12      MR. MCGUIRE:

13           Yes, Your Honor, I'd like to call John F. Crum  
14      first.

15      HEARING OFFICER SHAPIRO:

16           Mr. Crum, you want to come around, please.

17                           (WITNESS DULY SWORN)

18  
19           The witness, JOHN F. CRUM, having first been duly  
20      sworn, testified as follows:

21                           DIRECT EXAMINATION

22      BY MR. MCGUIRE:

23      Q     Mr. Crum, for the record, just please state your  
24      full name?

1 A John Franklin Crum.

2 Q And Mr. Crum, you are from Inez, Kentucky?

3 A Right.

4 Q And you filed this--one of the participants  
5 filed this complaint asking for a hearing  
6 before the Public Service Commission?

7 A Right.

8 Q And you actually served on the Martin County  
9 Water Board for a great number of years I  
10 believe?

11 A I served on the water board for 21 years and  
12 was Chairman for 18 years.

13 Q And during that time I guess you probably, as  
14 much as anybody in Martin County, is familiar  
15 with the operation of Martin County Water  
16 Board?

17 A Well, I hope so, yes.

18 Q How many--when you went on the board, 21  
19 years ago, how many customers did they serve?

20 A Three hundred twenty-three.

21 Q And do you know approximately how many they  
22 served when you went off that board?

23 A Thirty-three seventy-five.

24 Q And in the 21 years you served on the Martin

1 County Water Board was there ever a complaint  
2 filed with the Public Service Commission?

3 A Not to my knowledge there has never been  
4 another complaint filed.

5 Q You are familiar--you, I guess, on behalf of  
6 the other gentlemen here, at some point, made  
7 deposits with Martin County Water Board for  
8 water taps; is that correct?

9 A That's right, yes, sir.

10 Q Before I get to that and identify those, let  
11 me ask you this, before you left the water  
12 board was there something that happened that  
13 created some animosity?

14 A We had a time card problem. There was--the  
15 secretary was being checked on and off by  
16 current employees and drawing full time pay  
17 and was going to school full time during the  
18 same period.

19 Q And did you report that or complain about  
20 that situation?

21 A I did, and refused to sign payroll checks  
22 after that--when I found that out.

23 Q Did you ask for an investigation of that  
24 circumstances?

1 A Yes, I did.

2 Q And the people that--

3 MR. ADAMS:

4 I'm going to object to that, I don't  
5 think this is relevant.

6 HEARING OFFICER SHAPIRO:

7 Well, I think it goes to the question of  
8 motive for denying the application for  
9 service. I think that was raised in the  
10 complaint, I'll let it go.

11 MR. MCGUIRE:

12 Thank you and I do not intend to go into  
13 any great detail, just simply to put--to  
14 draw the picture, Your Honor.

15 Q The people that are presently at the Martin  
16 County Water Board, those would have been the  
17 people who at that time would have approved  
18 those time cards that would have been turned  
19 in?

20 A Yes, sir.

21 Q And there was time cards being turned in for  
22 hours not worked?

23 A That was the way I--drawing the pay for the  
24 day and being away at school all day, so--

1 Q And so after 21 years and some political  
2 changes you were not reappointed to the water  
3 board?

4 A That's right, yes, sir.

5 Q And--but actually the deposits you made were  
6 made at a time while you were still on the  
7 board?

8 A Probably in June of '98, I believe, was the  
9 date on the check.

10 MR. McGUIRE:

11 Your Honor, I have several checks I'd  
12 like to have identified and have him--

13 HEARING OFFICER SHAPIRO:

14 Were those checks also made part of the  
15 --copies of those checks part of the  
16 complaint?

17 MR. McGUIRE:

18 Right, yes, sir.

19 HEARING OFFICER SHAPIRO:

20 Can we just stipulate that those checks  
21 that were filed with the complaint be  
22 made a part of the record and part of  
23 this witness's testimony>?  
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MR. ADAMS:

I don't have any problem with that, Your Honor.

MR. MCGUIRE:

May I give those to him to look at?

HEARING OFFICER SHAPIRO:

Okay. But there will be no need to introduce them because everybody has agreed that those--they have been previously made a part of the record and part of the evidence as being presented here today.

Q I'll just ask him to identify those checks and for the record state the dates that those checks were written and the amounts of each one? There are just four checks, I think.

A Benton and Teresa Crum on 6-27-98 for \$350; PNC Development, John F. Crum, 7-14-98 for \$350; Walker Realty, Derle Walker, 4-28-99 for \$350; C. W. Realty, Derle Walker, for 1,050 for three water taps, that was 6-18-98.

Q And, so, this case, or the complaint you filed and what this case is about is six residential water taps?

1 A Right, yes, sir.

2 MR. MCGUIRE:

3 Your Honor, I think the water company  
4 has a map, I haven't seen it before,  
5 they brought it today, but I'd like to  
6 be able to use it so he can just kind of  
7 show you where everything is here.

8 HEARING OFFICER SHAPIRO:

9 Any objection?

10 MR. ADAMS:

11 No, your Honor, because I'm going to use  
12 it as an exhibit, so he's welcome.

13 HEARING OFFICER SHAPIRO:

14 It would probably be better there. I  
15 think we will have more room and if the  
16 witness would--if the witness is going  
17 to testify standing next to it he will  
18 need to take that microphone with you as  
19 you go.

20 Q Now, just to finish up with the checks, is there  
21 any of those checks that state what the purpose of  
22 the check is for under the for clause?

23 A All of them state water tap, John F. Crum;  
24 water tap, Benton Crum; one water tap, Derle

1 Walker; and three water taps from C. W.  
2 Realty for three water taps.  
3 Q Okay. Did you deliver those checks to the  
4 water company?  
5 A I delivered those to Mr. Justice the  
6 operations manager of Martin County Water.  
7 Q Was there any question when you gave him  
8 those checks of what those checks were for?  
9 A No, sir, no, it was just plain water taps is  
10 what it states.  
11 Q And he accepted those?  
12 A Yes, sir.  
13 Q Okay. Just so the court can understand here,  
14 the six water taps that were--that you are  
15 trying to get service for--and since you are  
16 sitting over--can I be his hand for him.  
17 They would be in the area I'm pointing  
18 towards?  
19 A That's right, yes, sir.  
20 Q And I think that, in fact, your son has already  
21 built his house there?  
22 A Right.  
23 Q And I think this aerial map was made prior to  
24 his building his house?

1 A That is probably ten years old, that map, it  
2 looks like it, eight to ten.

3 MR. MCGUIRE:

4 Can I show him a picture and have it  
5 added?

6 MR. ADAMS

7 I haven't seen it, Your Honor, it wasn't  
8 on the exhibits?

9 MR. MCGUIRE:

10 Yes, we sent you a photo copy of it.

11 MR. ADAMS:

12 I don't think I've seen it before, Your  
13 Honor. I'm not going to object to it.

14 MR. MCGUIRE:

15 Let me ask that that be identified as  
16 our Exhibit Number 1.

17 Q And we would ask that you identify that to  
18 the Hearing Officer?

19 A This is the home of Benton Crum that is built  
20 on the property there.

21 Q Would you show it so the Hearing Officer can  
22 see it, or hand it to him?

23 HEARING OFFICER SHAPIRO:

24 Have you shown it to counsel for the

1 Staff?

2 MR. McGUIRE:

3 No.

4 HEARING OFFICER SHAPIRO:

5 Let the reporter mark that for  
6 identification as Complainant's Exhibit  
7 1.

8 Q Now, this house would be located--would it be  
9 in the area I'm pointing with my finger?

10 A Yes, sir, it is in that general area there.

11 HEARING OFFICER SHAPIRO:

12 You need to probably just write it,  
13 because you have to remember that this  
14 is going to be a transcript and the  
15 transcript won't show where you are  
16 pointing on the map.

17 Q Does this--I guess, to get our bearings, does  
18 this road run--would that be a north-south?

19 A That's 645 north-south.

20 Q North-south 645?

21 A Right.

22 Q So the lots and house--

23 A Would be the west side of 645.

24 Q --and house would be the west side of 645?

1 A Right.  
2 Q And 645 is a four lane road, it has only been  
3 there a few years?

4 A Probably 10 years.

5 Q And the house in the photograph it doesn't--  
6 was one of the water taps?

7 A Doesn't appear.

8 Q That these checks were supposed to be for?

9 A Right.

10 Q And does this house have water now?

11 A They drilled a well, put in a water softener.

12 Q But they have never been given city water?

13 A No, sir.

14 Q And you all ran water lines--

15 MR. ADAMS:

16 I'm going to object to him testifying.

17 I know this is informal, but--

18 HEARING OFFICER SHAPIRO:

19 Well, it is leading, let's--just ask him  
20 what kind and let him tell us what he  
21 did?

22 Q Did you all run water lines from this area?

23 MR. ADAMS:

24 Your Honor, he is doing it again.

1 HEARING OFFICER SHAPIRO:

2 Well, I'll let that go, go ahead.

3 Q Did you all run any water lines from this  
4 area?

5 A We ran water and waste water lines from that  
6 area under 645 and partially to Route 3 which  
7 is just across the creek there from 645.

8 Q Where does the water company line, where is  
9 it?

10 A It is on State Route 3, probably 200 feet  
11 from where we ran the water line.

12 Q And let me see, the line you ran you would  
13 have run under 645?

14 A Yes, sir, under 645.

15 Q Okay. And would you describe for the hearing  
16 officer the kind of line you ran?

17 A We run approved three inch line encased in a  
18 five inch line in a 12 inch hole under Route  
19 645.

20 Q And did you run any other lines?

21 A We run a waste water line also. One is  
22 encased from the other.

23 Q Has the Commission ever offered to hook up  
24 those lines for you to their line?

1 A No, sir. I went to the water plant probably  
2 the early part of May, talked to Mr. Justice  
3 and Mr. Cumbo came in and I asked him what it  
4 would take to get a hookup to our water line.  
5 And they said they would look at it and get  
6 back with me. That was in the latter part of  
7 April or May of this year.

8 Q Did they ever get back to you?

9 A I haven't heard from them yet, no.

10 Q Is there--are those lines equal to or greater  
11 than the lines that you all would have hooked  
12 up to in your 21 years on the water board and  
13 18 years as Chairman?

14 A Well, PSC only approves--the smallest line  
15 now is a three inch line, used to we could  
16 run one inch lines or whatever, but it  
17 approved water line.

18 Q Are there people serviced in this area who  
19 are on smaller lines?

20 A There is probably on the west side--well 645  
21 there is probably 21 families that are served  
22 from Route 3 water line on the west side of  
23 645.

24 Q What would--would there--where approximately would

1 be the two nearest neighbors?

2 A Just to the north the second two hollows, it  
3 is on closer than that, but in that area yes.

4 Q So that would be just north of your property?

5 A Probably half to 3/4 of a mile, right there  
6 is one where your--

7 Q Do you know what size line they have under  
8 645?

9 A They have a one inch line that serves two  
10 households, no, in fact, three households  
11 with a one inch line just north.

12 Q Now, did you check the--did you check the  
13 elevation of the land at your property that  
14 we are asking for service for?

15 A Yes, sir, I did.

16 Q And what was the elevation at your land?

17 MR. ADAMS:

18 Your Honor, I don't know how that could  
19 be admissible. He's not an expert.

20 HEARING OFFICER SHAPIRO:

21 Ask him how he checked it?

22 Q The elevation that--

23 HEARING OFFICER SHAPIRO:

24 Wait a minute, before you state what you

1 found the elevation to be, how did you  
2 determine the elevation of your  
3 property?

4 A How did I determine the elevation? I went to Big  
5 Sandy Regional Airport and borrowed two certified  
6 altimeters that we used to give barometric  
7 pressure to aircraft that call in for landing and  
8 what--I borrowed their certified altimeters, went  
9 to the property and called our automatic weather  
10 service and obtained the barometric pressure and  
11 set it in the altimeters and read the elevation.  
12 That is an approved method of aircraft flying in  
13 the world, so I would say it was pretty accurate.

14 Q You are also, I think, Chairman of the  
15 Airport Board?

16 HEARING OFFICER SHAPIRO:

17 Wait a minute.

18 A Yes, sir, Big Sandy Regional Airport.

19 HEARING OFFICER SHAPIRO:

20 What is the objection?

21 MR. ADAMS:

22 The same objection, Your Honor, is  
23 number one, where on the property he  
24 took the reading, because it varies

1                   greatly in elevation.

2     A     Yes, sir, that was what I was getting to  
3           after answering his question.

4                   MR. ADAMS

5                   I don't know if the court has ruled on--

6     A     On the--

7                   HEARING OFFICER SHAPIRO:

8                   Wait a minute, wait a minute, we have an  
9                   objection. What is the question on the  
10                  floor? What is the witness responding  
11                  to?

12                  MR. McGUIRE:

13                  As I understood--

14                  HEARING OFFICER SHAPIRO:

15                  You are asking--go ahead.

16                  MR. McGUIRE:

17                  As I understood part of the defense or  
18                  issue--

19                  HEARING OFFICER SHAPIRO:

20                  No, I mean--he is not questioning  
21                  relevancy, he is questioning the ability  
22                  of the witness to provide the  
23                  information, that is what the objection  
24                  is about; isn't that right?

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MR. ADAMS:

Yes, Your Honor, that's correct.

MR. MCGUIRE:

This man used a calibrated machine that is used in measuring elevation, he has been trained in using that machine, he is a licensed pilot, has received training in using that machine.

HEARING OFFICER SHAPIRO:

Well he hasn't testified to any of that.

MR. MCGUIRE:

Okay, let me lay some--if you would like I will lay some foundation.

MR. ADAMS:

Your Honor, please, the other reason I object if he is going to be an expert that is not on his witness list as an expert.

HEARING OFFICER SHAPIRO:

Well, let him go ahead.

Q Mr. Crum, are you a licensed pilot?

A Yes, sir.

Q Have you had training in using an altimeter?

A Yes, sir, about 21 years of it.

1 Q Is that something that is regularly used at  
2 the airport?

3 A Yes, sir, it is.

4 Q Have you used such an altimeter on hundreds  
5 of occasions and made the appropriate  
6 barometric adjustments?

7 A Yes, sir, I have.

8 Q In flight, especially in conditions of overcast--

9 MR. ADAMS:

10 Your Honor, he is testifying.

11 HEARING OFFICER SHAPIRO:

12 He is somewhat leading.

13 A Yes, sir, you learn to use it or you are in  
14 the mountains, up our way.

15 Q All right, do you also serve in any capacity  
16 with the Big Sandy Airport Board?

17 A I'm Chairman of the Four County Regional Airport  
18 board, have been for the past ten years, and on  
19 the Airport Board for the past 20 years since its  
20 inception.

21 Q Since the airport was opened?

22 A Since there was an airport board, before we  
23 had an airport.

24 Q You took this instrument and measured the

1 elevation at the same barometric pressure at  
2 different locations?

3 A Right.

4 Q Would you tell the court the locations that  
5 you measured the elevations?

6 A On this elevation where Mr. Walker has a  
7 house built was 640 feet.

8 HEARING OFFICER SHAPIRO:

9 The question is where did you measure  
10 the elevations?

11 A This location is one, 640 feet.

12 HEARING OFFICER SHAPIRO:

13 Where is the location?

14 A This is a level field.

15 HEARING OFFICER SHAPIRO:

16 On whose property did you take the  
17 measurement?

18 A Mr. Derle Walker.

19 HEARING OFFICER SHAPIRO:

20 And who else--and what other property  
21 did you make these measurements?

22 A On Benton Crum, on two locations that are  
23 served by water here, and one up here on west  
24 side of 645.

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HEARING OFFICER SHAPIRO:

Those are the four that you took?

A Yes, sir.

Q Now, will you tell the court the elevation at each of those locations?

A Okay. On Mr. Walker's lot the elevation was 640 feet, Benton Crum's lot the elevation was 760 feet, the two locations to the north that are served by water, Bobby Hall, is 725 feet and Boise Priest is 805 feet.

Q Okay, please take your seat. Now, your testimony concerning Boise Priest what inch line is he served by?

A He is on the same one inch line with Mr. Bobby Hall. They are both on the one inch line coming under 645.

Q There has been some question raised of when certain new procedures were adopted by the Martin County Water Board while you were still Chairman in April of '98.

A April '98 a development, water procedure development plan, draft copy was given to all the board members to look at, make changes or additions, deletions whatever, this was not

1 discussed again until November, December of  
2 '98 and the procedure at that time was  
3 approved.

4 Q So there was no procedure for getting these  
5 water taps that has been voted on and  
6 approved at the time that you all gave your  
7 deposits?

8 A No, sir, there was nothing in effect.

9 Q Who is the superintendent of the Martin  
10 County Water District?

11 A Mr. Niles Cumbo.

12 Q And is there some animosity between you two  
13 because of your prior service as Chairman?

14 A I would say somewhat, yes, sir.

15 Q Following the procedures that were in effect in  
16 April of '98 when you were Chairman of the Martin  
17 County Water District, is there any reason that  
18 you all would not have granted water service to  
19 somebody similarly situated?

20 MR. ADAMS:

21 Your Honor, that is argumentative? It  
22 doesn't have anything to do with the  
23 regulations.

24 A I think--

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HEARING OFFICER SHAPIRO:

Wait a minute. How do you respond to that Mr. McQuire, to the objection?

MR. MCGUIRE:

Well, I think that the Water District seems to be handling this case, and this is part of the question here, is whether water to Mr. Crum is being handled different than it is to everybody else. If the rules have changed, informal rules become formal rules if you provide water over and over to 3,000 customers under this rule, you didn't have any written procedures in effect, but this is how we did to everybody, then that in essence becomes your procedures. And you can't discriminate against Mr. Crum just because he was--he gave 21 years of public service on the board and now you are mad at him.

HEARING OFFICER SHAPIRO:

Why do you say this is not relevant at this point?

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MR. ADAMS:

Your Honor, I think he is going  
afield, I think he is testifying.

HEARING OFFICER SHAPIRO:

Well, I'll let him answer, go ahead.

A The rule that--

HEARING OFFICER SHAPIRO:

Now, the question, I think, was whether  
or not the Commission--

A --has changed the procedure?

HEARING OFFICER SHAPIRO:

Whether or not the commission would have  
followed a different procedure than was  
followed in your case while you were on  
the board; is that essentially it?

MR. MCGUIRE:

Yes, sir.

HEARING OFFICER SHAPIRO:

Is that--the answer to that is no?

A Well, the rule that I always used or we used,  
which I think is approved by PSC, for one  
customer from the main line you can go  
approximately 200 feet. If you have five  
customers that is a 1,000 feet of line that

1 you can run from your mail line to serve the  
2 customers. That is basically the rule that I  
3 followed for the 21 years that I was with  
4 Martin County Water. You can't run two miles  
5 of line for five customers, but 200 feet rule  
6 is what I always used, ten customers 1,000  
7 feet, 15 customers--

8 Q Now, Mr. Crum where you all have already run  
9 the service from the six taps we are asking  
10 for, towards State Route 3 where the Martin  
11 County Water Line is, is there any question  
12 about easements across that property as far  
13 as the hookup?

14 A Well, there shouldn't be with the property  
15 west of 645. There is two easements to Route  
16 3 that is in the--with the property, so I  
17 told the Martin County Water that we would  
18 provide the easements and whatever, there  
19 would be no problem on that. And, in fact,  
20 we have two right-of-ways that could be used.

21 Q You have two separate right-of-ways to go  
22 from where your line presently ends, the last  
23 few feet over to their line?

24 A Right.

1 Q Have they ever offered to hook up your water  
2 line under any conditions?

3 A No, sir, they said they would get back with  
4 me and whatever, and that is the last I've  
5 heard.

6 Q And is what you are asking for then is an  
7 order directing them to provide water taps  
8 for the six residential taps that you all  
9 gave deposits for?

10 A That is what we would like to have, yes.

11 MR. McGUIRE:

12 That's all I have of this witness.

13 HEARING OFFICER SHAPIRO:

14 Let's mark the map that has been referred to  
15 during this witness's testimony as--

16 MR. McGUIRE:

17 Joint exhibit?

18 HEARING OFFICER SHAPIRO:

19 Well, we'll call it Defendant's Exhibit 1. And  
20 you had Mr. Crum identify a photograph of Benton  
21 Crum's residence; is that correct?

22 A Yes.

23 HEARING OFFICER SHAPIRO:

24 And do you wish to enter that into that record?

1 MR. MCGUIRE:

2 Yes, sir.

3 HEARING OFFICER SHAPIRO:

4 Any objection?

5 MR. ADAMS:

6 I hadn't seen it before, but I'm not going to  
7 object to something like that, Your Honor.

8 HEARING OFFICER SHAPIRO:

9 So ordered.

10 (EXHIBIT SO MARKED: Complainant Exhibit No. 1)

11 HEARING OFFICER SHAPIRO:

12 Mr. Adams.

13 MR. ADAMS:

14 Thank you, Your Honor. Can I get up and move  
15 around?

16 HEARING OFFICER SHAPIRO:

17 Yes, but you will need to take that microphone  
18 with you.

19 MR. ADAMS:

20 Usually I think I'm loud mouthed enough that that  
21 is not necessary.

22 HEARING OFFICER SHAPIRO:

23 Well, it might help some.

24

1 MR. ADAMS:

2 Can you see this all right, Mr. Crum?

3 A Yes, sir.

4 HEARING OFFICER SHAPIRO:

5 Again, we are talking about Defendant's Exhibit 1?

6 MR. ADAMS:

7 Yes, Your Honor.

8 HEARING OFFICER SHAPIRO:

9 Are you going to--do you intend to introduce that  
10 as an exhibit in this proceeding?

11 MR. ADAMS:

12 Yes, Your Honor, I thought we had already  
13 introduced it.

14 HEARING OFFICER SHAPIRO:

15 Well, he was just using it, we just--

16 MR. ADAMS:

17 I move for the introduction.

18 HEARING OFFICER SHAPIRO:

19 Can we do that by agreement and stipulation?

20 MR. ADAMS:

21 Yes, I'd move this as--

22 HEARING OFFICER SHAPIRO:

23 That will be introduced as Defendant's Exhibit 1  
24 then?

1 MR. ADAMS:

2 Yes, Your Honor, in fact, I've even got it  
3 premarked.

4 (EXHIBIT SO MARKED: Defendant Exhibit No. 1)

5

6

CROSS EXAMINATION

7 BY MR. ADAMS:

8 Q I think you recognize this as an aerial photo of  
9 the area. It is a little bit out of date.

10 A Yes, I have the same one.

11 Q All right, sir.

12 A The same one rolled up over there.

13 Q And first we have the Eden West Subdivision  
14 about where that is marked and it covers, I  
15 guess, the entire hollow and some of those  
16 adjoining hollows, doesn't it?

17 A Right.

18 Q And who are the principles in Eden West?

19 A Derle Walker and John Crum.

20 Q All right. And what relation are they to  
21 you?

22 A They are us.

23 Q Oh, I'm sorry. I'm sorry, I'm not with it today.

24 A Okay.

1 Q And the--and I believe--how long have you  
2 been trying to develop that?

3 A Oh, probably a year, year and a half  
4 probably.

5 Q All right. And as part of the attempt to  
6 develop it when you were water commission  
7 Chairman I believe you contacted PDR  
8 Engineering Company.

9 A You're right.

10 Q About that. And you and Mr. Bob Taylor  
11 looked into what would be required to make  
12 water available for that entire subdivision?

13 A Yes, sir, we did.

14 Q And--Your Honor, I've got these premarked if  
15 it is all right, I'm going to refer to the  
16 premarked. I want to show you what I have  
17 marked as Defense Exhibit Number 6.

18 MR. McGUIRE:

19 May I see what you are showing him?

20 MR. ADAMS:

21 Yes, sir. And look under those two.

22 MR. McGUIRE:

23 Your Honor, let me--I would like to  
24 object, and I've let him ask a few

1 questions, on the grounds of relevancy.  
2 We are not here asking for water taps  
3 for a subdivision, we are asking for six  
4 residential taps. These gentlemen have  
5 been working to develop a subdivision,  
6 that is not this case, that is not what  
7 we are asking for is water for the  
8 subdivision. We are asking for water  
9 for six individual residential taps the  
10 deposits have paid for. The subdivision  
11 project is humongous, we are not asking  
12 for that, that is what they want to  
13 spend a lot of time on today, and we can  
14 argue about this subdivision but we are  
15 asking for six residential taps, not the  
16 subdivision.

17 MR. ADAMS:

18 Now,--

19 HEARING OFFICER SHAPIRO:

20 Well, let me see where the testimony  
21 goes. It's a little early to tell  
22 whether or not it is relevant.

23 Q We have a letter I believe it is Exhibit 6,  
24 from Holly Nicholas, another one Exhibit 7

1 from Robert Taylor PDR and then there was a  
2 cost estimate there.

3 A Right.

4 Q And that cost estimate was for \$211,000?

5 A Yes, sir. \$211,250.

6 Q Yes, sir, all right. And as part of that--first,  
7 over here on the Marcus Wells tank, that cost  
8 estimate was based on furnishing the subdivision  
9 from the Marcus Wells tank?

10 A I suppose so, yes.

11 Q And the reason the Marcus Wells tank was used  
12 is because it is about--well its an elevation  
13 of about I think 1,100 feet?

14 A I think 1,215.

15 Q All right, but it was high enough to where  
16 for the subdivision they would furnish--be  
17 able to furnish not only adequate water  
18 pressure but it would also be able to furnish  
19 fire protection?

20 A Yes, sir, and we still plan on doing this but the  
21 \$211,250 plus 111 water taps at \$350 each is three  
22 quarters of a million dollars? We are only  
23 wanting--

24 Q Well, let me ask the questions. Mr. McGuire,

1 can more than adequately--

2 MR. McGUIRE:

3 Can he be allowed to answer?

4 HEARING OFFICER SHAPIRO:

5 Well, he can but he has to be responsive  
6 to the question.

7 Q Thank you. So, in order to furnish Eden  
8 Branch, then you would have to--you would  
9 agree that most--the only thing that would be  
10 feasible would be the Marcus Wells tank?

11 A To furnish the complete subdivision, some of the  
12 elevations of 1200 feet or so, yes, sir.

13 Q Okay. Now, let's talk about the other  
14 possibilities, along Route 40 here I believe  
15 there is a line that runs along Route 40 on  
16 to 645?

17 A Yes, sir.

18 HEARING OFFICER SHAPIRO:

19 Is route 40 shown on the exhibit?

20 MR. ADAMS:

21 Yes, Your Honor.

22 HEARING OFFICER SHAPIRO:

23 At the bottom of the photograph?

24

1 MR. ADAMS:

2 Yes, Your Honor.

3 Q And you could run a tap into the water line  
4 at 645 and run it on down the highway to the  
5 subdivision?

6 A That really isn't feasible.

7 Q Okay.

8 A It would be a mile and a quarter to get to  
9 the property from Route 40, a mile of line  
10 from the tank would get you over the complete  
11 property to the front end.

12 Q All right, that's fine, so that would be out  
13 anyway. Now, the other thing along Route 3  
14 which is this direction.

15 A Right, 3 North.

16 Q That 3 North, now the 3 North, number one  
17 that is fed off the Inez Water tank?

18 A Yes sir.

19 Q And I don't have my notes, that is a much shorter  
20 elevation, much lower elevation?

21 A Than the complete property, but not where we  
22 are asking for the six water taps?

23 Q But in order to--but you would agree that it  
24 would not be feasible at all to try to do

1           either subdivision off the Route 3 line?

2       A       No, the 640 elevation property, and, in fact,  
3           they are furnishing 805 feet elevation and  
4           725, so this is lower elevation from the  
5           Route 3 property on a much smaller line.

6       Q       That's not my question, just answer my  
7           question.

8       A       Okay, sorry.

9       Q       You agree it would not--that subdivision could not  
10          be furnished out of that Route 3 line because of  
11          the elevation?

12      A       The complete subdivision could not be, yes,  
13          sir.

14      Q       Now, we go along here I think you come up  
15          here and I believe you are--I'll show you  
16          what has been marked as Exhibit Number 16 for  
17          identification, that is a sign. You are, in  
18          fact, selling lots?

19      A       Yes, sir, we are trying to sell lots, but  
20          without water you can't sell lots.

21      Q       I understand, but right now, that is what you  
22          are looking at is selling lots for the  
23          subdivision?

24      A       Yes, sir, right.

1 Q And likewise, this--you--I want to show you  
2 what has been previously marked Exhibit 17.  
3 Now, that is a plat of the subdivision?

4 A Yes, sir.

5 Q And it is not on record, apparently it is  
6 preliminary but, then again, this is development  
7 that you are planning for that property?

8 A Yes, sir.

9 Q And I believe in the Martin County Mercury--  
10 Martin County Sun on September 24, '97,  
11 edition and then on September 24, '97, and  
12 those are marked Exhibits 9 and 10, I believe  
13 you actually had a contest to name the  
14 subdivision and then you were interviewed in  
15 one of those--by one of those reporters about  
16 selling lots?

17 A Yes, sir, right.

18 Q So this--you are not in, throughout this  
19 whole time period, were trying to develop  
20 this as a subdivision?

21 A Yes, sir.

22 MR. ADAMS:

23 Okay. Your Honor, I would move at this  
24 time the introduction of those exhibits

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that I have identified.

MR. MCGUIRE:

I'll renew my objection, I see no tie  
in--

HEARING OFFICER SHAPIRO:

Well, let me ask you this, are you  
planning to have another witness  
identify these documents?

MR. ADAMS:

Yes, Your Honor, I can do that. I mean,  
no, not the exhibit, the--not the  
subdivision plant, I do--I can do it on  
the photographs and on the  
correspondence.

HEARING OFFICER SHAPIRO:

I thought you had the subdivision plat  
premarked as an exhibit?

MR. ADAMS:

I did, Your Honor.

HEARING OFFICER SHAPIRO:

You weren't planning to use--to  
introduce that through one of your  
witnesses?

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MR. ADAMS:

I was going to introduce it through Mr. Crum.

HEARING OFFICER SHAPIRO:

You were going to introduce it through Mr. Crum?

MR. ADAMS:

Yes, Your Honor.

HEARING OFFICER SHAPIRO:

And Mr. Crum, are you ready to identify that as an accurate copy of the--

A A preliminary.

HEARING OFFICER SHAPIRO:

--preliminary plat of the subdivision?

A Yes, sir.

HEARING OFFICER SHAPIRO:

And you are trying--as I take it from your questions, you are using that to show that the witness and his partner plan to develop this property?

MR. ADAMS:

That's correct, Your Honor.

HEARING OFFICER SHAPIRO:

And your objection is that the--

1 application is for six taps and not for  
2 taps for the entire subdivision?

3 MR. McGUIRE:

4 I think you are phrasing "had a plan"  
5 was exactly right. They ran into  
6 difficulties so there is no plan and we  
7 are asking for--

8 HEARING OFFICER SHAPIRO:

9 Wait a minute, but that is your  
10 objection, the objection is that--

11 MR. McGUIRE:

12 We are asking for six taps, we are not  
13 asking anybody to supply water to the  
14 subdivision.

15 MR. ADAMS:

16 May I respond, Your Honor?

17 HEARING OFFICER SHAPIRO:

18 Yes.

19 MR. ADAMS:

20 Your Honor, the whole problem we have,  
21 and this is what I think the evidence is  
22 going to be, they are wanting taps right  
23 here at the mouth of the hollow. And  
24 they are wanting to put in a three inch

1 line, I think he has testified to that  
2 and I'm going to get into some other  
3 things here. To do this subdivision it  
4 is going to require about \$211,000  
5 investment which he hasn't complied with  
6 the rules of the Martin County Water  
7 District. I'm going to develop that  
8 some more. But, beyond that, the  
9 concern is that we--once those taps go  
10 in we think there is a question even now  
11 about adequate water pressure, but we  
12 don't want to get rooked into the  
13 subdivision, because they will be  
14 selling off lots. We don't have  
15 adequate pressure, what they are  
16 proposing is not adequate and they will  
17 be back down here again with grantees of  
18 those lots. Now, under the PSC Rules or  
19 Regulations, as I read them, the  
20 subdivision developer has to advance  
21 those costs of the subdivision and then  
22 he tries to recoop them out of revenues.  
23 And, you know, if he would do that, that  
24 is not a problem, but we feel like they

1 are trying to come in the back door on  
2 this subdivision because obviously they  
3 are selling lots now. We have got a  
4 picture where he is selling lots now and  
5 we think this is going to be a potential  
6 problem, that's why it is relevant.

7 HEARING OFFICER SHAPIRO:

8 Well, I think--it seems to me the  
9 objection goes more to argumentative  
10 than it is to relevancy. Whether or  
11 not--I'm going to allow them to  
12 introduce the plat to show that there  
13 have been preliminary plans to develop  
14 the property into a subdivision. And we  
15 can argue whether or not that is an  
16 issue that should be considered in the  
17 final decision or whether or not the six  
18 taps will stand on their own separately.  
19 So I'm going to introduce the  
20 Defendant's 2. Well, let's mark that--

21 MR. ADAMS:

22 It's premarked as Exhibit Number 17.

23 HEARING OFFICER SHAPIRO:

24 Let's change that to Defendant's Exhibit

1                   Number 2.

2                   MR. ADAMS:

3                   That will be fine, Your Honor. I'll  
4                   just put it over there so we won't have  
5                   any confusion.

6                   (EXHIBIT SO MARKED: Defendant Exhibit No. 2)

7                   HEARING OFFICER SHAPIRO:

8                   That's described as a preliminary plat  
9                   of--what's the name of the subdivision?

10                  MR. ADAMS:

11                  Eden West. And Your Honor, just sort of  
12                  housekeeping on the record, on this  
13                  photograph, that is marked Exhibit 6, I  
14                  guess we would be Exhibit 3. I think he  
15                  has identified as--that is a photograph  
16                  of where he is trying to sell lots,  
17                  isn't it Mr. Crum?

18         A         The sign?

19         Q         Yes, sir.

20         A         Right.

21         Q         And that's of the subdivision?

22         A         Right.

23         Q         And whose phone number is that on there?

24         A         It's my phone.

1 Q And that is out there as we speak?

2 A Yes, sir.

3 MR. ADAMS:

4 All right. And I would move the  
5 introduction of this as Exhibit Number  
6 3, Your Honor. I don't know if the  
7 court wants to see it now or later?

8 HEARING OFFICER SHAPIRO:

9 The sign at the entrance to the  
10 subdivision?

11 MR. ADAMS:

12 Yes, Your Honor.

13 HEARING OFFICER SHAPIRO:

14 I suppose the same objection?

15 MR. McGUIRE:

16 Yes, Your Honor.

17 HEARING OFFICER SHAPIRO:

18 Overruled, let it in for the same  
19 purpose to show that the land is to be  
20 developed.

21 (EXHIBIT SO MARKED: Defendant Exhibit No. 3)

22 MR. ADAMS:

23 And likewise, Your Honor, what we have  
24 premarked as Exhibit Number 6 which is a

1 letter April 23, 1998, from Holly  
2 Nicholas and a second one--

3 HEARING OFFICER SHAPIRO:

4 I prefer that that was brought in with  
5 your witness.

6 MR. ADAMS:

7 All right, Your Honor. It is--I can do  
8 it through him, Your Honor.

9 HEARING OFFICER SHAPIRO:

10 Well, through your own witness.

11 MR. ADAMS:

12 That's fine, Your Honor, I'll do it that  
13 way. What is premarked as Exhibits 9  
14 and 10, Your Honor, those are the  
15 newspaper articles he has identified  
16 them and I would like to have those  
17 entered at this time.

18 HEARING OFFICER SHAPIRO:

19 Okay. Let's call what has been  
20 premarked as 9--

21 MR. ADAMS:

22 And 10.

23 HEARING OFFICER SHAPIRO:

24 --as Exhibit Number 4, and what is that?

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MR. ADAMS:

It is two newspaper articles, one where they are running a contest and one where he gives an interview about selling lots.

HEARING OFFICER SHAPIRO:

Okay. Now, which one is--which is the--

MR. ADAMS:

Number 9, Your Honor, is where they had a contest to name the subdivision, and that will be number four now, and what was previously marked as Exhibit Number 10 will now be Exhibit Number 5 and that is an interview that he had in the paper, in the newspaper.

HEARING OFFICER SHAPIRO:

An interview about the subdivision?

MR. ADAMS:

Yes, Your Honor.

HEARING OFFICER SHAPIRO:

Same objection?

MR. MCGUIRE:

Object to relevancy and admissibility of both of those.

1 HEARING OFFICER SHAPIRO:

2 Overruled.

3 (EXHIBITS SO MARKED: Defendant Exhibits Numbered  
4 4 & 5)

5 Q Now, Mr. Crum there was some discussion  
6 about, I believe, the gentlemen in the next  
7 hollow who had water service?

8 A Yes, sir.

9 Q And what is that gentleman's name?

10 A Well, there is about 21 down the road.

11 Q All right, I understand, but the next one?

12 A The immediate one is Bobby Hall.

13 Q All right, now, Mr. Hall, the reason that was  
14 done, that was a highway relocation, was it  
15 not?

16 A Right, yes, sir.

17 Q And, in fact, the people in--the two or three  
18 people with Mr. Hall were highway  
19 relocations?

20 A No, none of the others were. His mother has  
21 recently moved up there and two years ago  
22 Boise Priest built a home there.

23 Q But they are--well, farther down though, I  
24 believe there are some Fitch--a family, isn't

1           there?

2    A       Yes, sir, there are several of them up there.

3    Q       And that is a highway relocation?

4    A       No, those were all original homes.

5    Q       Are you sure about that?

6    A       Yes, sir.

7    Q       Highway had nothing to do with that?

8    A       It goes by their home now.

9    Q       Now, you indicated--I think you were Chairman  
10           of the Martin County Water District until, I  
11           guess, January 1 of this year?

12   A       Yes, sir.

13   Q       And I want to show you what has been  
14           previously marked Exhibits Numbered 3, 4, and  
15           5. Starting with Exhibit Number 5 that is a  
16           copy of the water development procedures that  
17           was adopted when you were on the board?

18   A       In November and December of '98, yes, sir.

19                   MR. ADAMS:

20                           All right. Now, I'd like to have that  
21                           entered as an exhibit, Your Honor.

22                   HEARING OFFICER SHAPIRO:

23                           Defendant's Exhibit 6, what is it?

24

1 MR. ADAMS:

2 It is the water development procedures  
3 adopted by the Martin County Board.

4 MR. MCGUIRE:

5 I would enter my objection to relevancy.  
6 He has already testified and the checks  
7 were put in by agreement, they are dated  
8 in June of '98 and we are talking about  
9 a policy he testified was adopted in  
10 November or December '98 after the  
11 deposit of the residential water taps  
12 months later.

13 MR. ADAMS:

14 May I respond to that, Your Honor. I  
15 want to take care of that in just a  
16 second.

17 MR. MCGUIRE:

18 I don't see how a policy adopted in  
19 November would affect water deposits  
20 that were taken months earlier. I think  
21 the court needs, you just need to decide  
22 whether they can rely upon a policy  
23 adopted after they accepted the deposit.  
24

1 MR. ADAMS:

2 In response, Your Honor, I'm getting  
3 ready to introduce minutes from the  
4 March 10, 1998, meeting and April 21,  
5 1998, meeting where that policy was  
6 adopted.

7 MR. MCGUIRE:

8 Maybe he should introduce those minutes  
9 first to show the relevancy.

10 MR. ADAMS:

11 Well, I'm going to ask the witness about  
12 it.

13 HEARING OFFICER SHAPIRO:

14 What is it that Defendant's Exhibit 6  
15 show then?

16 MR. ADAMS:

17 Your Honor, that's the procedures, and  
18 I'm getting ready to introduce the  
19 minutes showing when they were adopted.

20 HEARING OFFICER SHAPIRO:

21 The procedures?

22 MR. ADAMS:

23 Yes, Your Honor, it was adopted by the  
24 Water District.

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MR. MCGUIRE:

The witness's testimony where they are adopted in November or December of '98. He can argue that they were adopted if he has something to introduce.

MR. ADAMS:

That's exactly what I'm going to do, Your Honor.

HEARING OFFICER SHAPIRO:

Let me ask you, they were formerly--you had formerly marked those with a different number?

MR. ADAMS:

Yes, Your Honor.

HEARING OFFICER SHAPIRO:

Mark them as Defendant's Exhibit Number 5.

MR. ADAMS:

These are premarked Exhibits 3 and 4 as I have them, but they would have to be entered as Exhibits 7 and 8.

HEARING OFFICER SHAPIRO:

And the water development procedures, how was that--

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MR. ADAMS:

That's marked as Exhibit Number 6 now,  
Your Honor.

HEARING OFFICER SHAPIRO:

And what was it marked before?

MR. ADAMS:

Number 5 before, Your Honor.

HEARING OFFICER SHAPIRO:

Has the witness already testified about  
those earlier?

MR. ADAMS:

He has testified just a minute ago, Your  
Honor, that those were the procedures.  
The only dispute is when they were  
adopted.

HEARING OFFICER SHAPIRO:

Has anybody--has there been any  
testimony about these documents,  
anything in the record about these  
documents that refers to the numbers  
that you had premarked them?

MR. ADAMS:

They are on the Exhibit list, Your  
Honor, if that is your question.

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HEARING OFFICER SHAPIRO:

Okay.

MR. ADAMS:

It may not be that--marked that--

HEARING OFFICER SHAPIRO:

On the exhibit list it shows what is now  
Defendant's Number 6.

MR. ADAMS:

That may not be exactly right because  
the exhibit list numbers may not  
correspond with this exactly, so you  
can't refer--I'm sorry this is  
confusing, I tried to simplify it and  
make it more complicated.

HEARING OFFICER SHAPIRO:

In any event the water development  
procedures that were adopted in 1998,  
sometime in 1998, and we don't know when  
at this point, is Defendant's Exhibit 6;  
is that correct?

MR. ADAMS:

Yes, Your Honor, that's correct, as it  
is marked now.

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HEARING OFFICER SHAPIRO:

And you want to make that a part of the record?

MR. ADAMS:

Yes, Your Honor.

HEARING OFFICER SHAPIRO:

Are those also--have those procedures filed with this Commission as--

MR. ADAMS:

It's an exhibit, Your Honor.

HEARING OFFICER SHAPIRO:

Have they been filed with this Commission though as attached, part of the tariff filing?

MR. ADAMS:

That I do not know.

HEARING OFFICER SHAPIRO:

Are they of public record anywhere?

MR. ADAMS:

They would be in Martin County with the Water District.

HEARING OFFICER SHAPIRO:

I'll let them in then.

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MR. ADAMS:

Thank you, Your Honor.

HEARING OFFICER SHAPIRO:

Formerly known as what, as five?

MR. ADAMS:

I apologize to the court, I'm used to the Federal--sometimes I try to do it the way Federal Court does and get them premarked and make them simple, and I made it more complicated.

(EXHIBIT SO MARKED: Defendant Exhibit No. 6)

HEARING OFFICER SHAPIRO:

Defendant's Exhibit 7?

MR. ADAMS:

Your Honor, I'm going to tender right now Defendant's Exhibit 7 which is minutes from the March 10, 1998, meeting and the next exhibit after that will be the minutes from the April 21, '98, meeting, I'd like to have the reporter mark them now.

HEARING OFFICER SHAPIRO:

These are minutes from the March 10, 1998, meeting?

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MR. ADAMS:

I'm getting ready to inquire about them,  
Your Honor, they've not been admitted  
yet.

COURT REPORTER:

Okay, which is which?

MR. ADAMS:

Just make it the next number, whatever  
that is.

HEARING OFFICER SHAPIRO:

Defendant 7.

MR. ADAMS:

Number 7, Number 8, Your Honor.

HEARING OFFICER SHAPIRO:

And what is Number 8, what meeting is  
that?

MR. ADAMS:

Number 7, Your Honor is March 10, 1998,  
number 8 is April 21, '98.

HEARING OFFICER SHAPIRO:

Okay, go ahead.

Q Thank you. Mr. Crum, I'm showing you some minutes  
from those two meetings and it looks like you were  
present at both of them; is that correct?

- 1 A Yes, sir.
- 2 Q And, isn't it a fact that those policies were  
3 adopted at that time?
- 4 A It says in the April--March 21 proposal to do  
5 a water development procedure plan.
- 6 Q Yes, sir.
- 7 A And draft copies were handed out to all the board  
8 members.
- 9 Q Yes, sir.
- 10 A The next time this was taken up was either  
11 November or December of '98 and voted on and  
12 passed at that time. I have requested a copy of  
13 the taped minutes of these meetings but haven't  
14 received those.
- 15 Q Well, Exhibit Number 8, on the April 21 you  
16 agree the minutes indicate that the  
17 procedures were adopted at that time?
- 18 A Yes, sir, in writing, that's what it says  
19 there.
- 20 Q According to the minutes, according to the  
21 official record they were adopted at that  
22 time?
- 23 A The water department also has recorded  
24 minutes, we have not been able to get a copy

1 of those to verify this.

2 Q Well, those are the minutes, official minutes  
3 as we speak, aren't they?

4 A That's what it says, yes, sir.

5 MR. ADAMS:

6 I move the introduction at this time,  
7 Your Honor.

8 HEARING OFFICER SHAPIRO:

9 You object?

10 MR. McGUIRE:

11 Objection.

12 HEARING OFFICER SHAPIRO:

13 Overruled, if for no other reason, these  
14 documents are a matter of public record  
15 anyway, and I think, you know, the  
16 Commission and the parties can take  
17 administrative notice of them for  
18 purposes of this hearing. So I'm going  
19 to let them into the record.

20 (EXHIBITS SO MARKED: Defendant Exhibits Numbered  
21 7 and 8)

22 Q Now, Mr. Crum, you would admit under those  
23 procedures that would certainly--what you did  
24 would not comply with those procedures as

1 promulgated when you were Chairman of the Board?

2 MR. MCGUIRE:

3 I'd like--I'm not for sure that question  
4 is about the subdivision or about the  
5 six residential taps.

6 MR. ADAMS:

7 Well, I reword it.

8 HEARING OFFICER SHAPIRO:

9 You can clarify that if you need to on  
10 redirect. Let's let the witness answer  
11 to the best of his ability.

12 Q You would agree that those procedures you  
13 have not followed in this case?

14 A For the complete subdivision, yes, sir, I  
15 would agree with that.

16 Q Now, also let's talk a minute, let's go back  
17 to the aerial here. And what we have on  
18 Route 3 I think you indicated as being a  
19 three inch line bored under the road? Or I  
20 guess it is a three line probably a bigger  
21 bore but--is that correct?

22 A Yes, sir, three inch water line, yes, sir.

23 Q And, of course, a three inch line is not  
24 adequate for a subdivision?

- 1 A No, sir.
- 2 Q And what do you have between Route 3 where  
3 the water line is and the end of that bore,  
4 you have a small bottom, plus you have  
5 Rockcastle Creek?
- 6 A Yes, sir.
- 7 Q And those are both privately owned? I mean  
8 that is private property?
- 9 A That--on the east side of 645 belongs to the  
10 property on the west side. Then there is two  
11 25 foot right-of-ways from that property to  
12 Route 3.
- 13 Q But what I'm getting at, and maybe I didn't  
14 ask it very well, between the end of your  
15 bore and the water tap on Route 3 there is  
16 privately owned property?
- 17 A No, sir, we would be going over our own  
18 right-of-way.
- 19 Q You already have a right-of-way?
- 20 A We have right-of-way in deed.
- 21 Q I'm talking about--I'm not talking about the  
22 Route 3, I'm talking about between 645 and--
- 23 A Let me show you on your map. This property  
24 in here belongs to this property in here,

1 this goes with this. There is a 25 foot  
2 right-of-way from this property to Route 3,  
3 there is a 25 foot right-of-way from this  
4 property to Route 3 in these two locations by  
5 virtue of deed.

6 Q All right, and do you have that right-of-way?

7 A Yes, sir.

8 Q Have you given it--did you ever give it to  
9 Craig Justice to show him?

10 A I told Mr. Justice we had it and would be no  
11 problem.

12 Q Did you ever furnish it to him? Did you ever  
13 furnish it?

14 A No.

15 Q In other words you are saying you already  
16 have a right-of-way to hook on?

17 A Two, yes, sir.

18 Q And you are saying you don't have to acquire  
19 any property?

20 A No, sir.

21 Q And I thought I understood you to say on  
22 direct examination you had to acquire about  
23 200 feet?

24 A No, we are within 200 feet of Route 3.

- 1 Q My question, let me rephrase it, because I  
2 don't understand it.
- 3 A All right.
- 4 Q Are you going to have to acquire another 200  
5 feet in order to get to the tap?
- 6 A No, sir, we need to lay 200 feet of water  
7 line and we will be at the Route 3 water  
8 main.
- 9 Q Okay.
- 10 A That's what I said.
- 11 Q But you never actually tendered--did you ever go  
12 to a board meeting to complain about this? I  
13 don't mean informally with any of the individuals,  
14 but formally go to the meeting?
- 15 A No, sir, that isn't necessary to get a water  
16 tap.
- 17 Q But I understand when you have difficulty did  
18 you ever do that?
- 19 A No, sir, I didn't. I didn't know I was  
20 having any difficulty.
- 21 Q Okay, well, you filed a complaint didn't you?
- 22 A Yes, but this was after they returned the  
23 checks. You see, they didn't do that until  
24 April or May of '99, that's when I filed the

1 complaint.

2 Q All right, after they returned the checks did  
3 you ever go to the board to try to resolve it  
4 informally?

5 A I talked to the superintendent and the  
6 manager, I didn't know--that was never a  
7 procedure if you wanted a water tap when I  
8 was on the commission. You paid your tap  
9 fee, you know, they set a water meter.

10 Q All right, now, okay, I want to show you what  
11 the letter dated February--

12 HEARING OFFICER SHAPIRO:

13 I don't think he has ever answered the  
14 question. You never did go to the board  
15 after your checks were returned?

16 A No, I didn't go to the board, I went to the  
17 principles of the board, I didn't think that was  
18 necessary.

19 HEARING OFFICER SHAPIRO:

20 You never attended a meeting of the  
21 commission and--for the purpose of  
22 questioning the denial?

23 A No, I did not, no.

24

1 HEARING OFFICER SHAPIRO:

2 Okay.

3 Q Now, Mr. Crum, I want to show you a letter dated  
4 February 26, 1999, from Craig Justice to you. I'd  
5 like to have that marked as an exhibit.

6 HEARING OFFICER SHAPIRO:

7 As Exhibit 9. What is it?

8 Q That is a letter, I believe, from Craig  
9 Justice addressed to you?

10 A Enclosed letter of February 3, as I stated  
11 previously there were no water mains in the  
12 area.

13 HEARING OFFICER SHAPIRO:

14 The question is is that a letter from  
15 Craig Justice to you?

16 A Yes, sir.

17 Q And you received that letter?

18 A Yes.

19 Q And did you--at the end of that he invited  
20 you to the next water meeting to discuss the  
21 situation?

22 A I went up to see Mr. Justice.

23 Q I understand.

24 A No, I didn't attend the meeting, I did not.

1 Q You declined his invitation to go to the  
2 meeting to try to resolve this informally?  
3 A I had other things doing at the time, yes,  
4 sir, I didn't attend the meeting.  
5 Q All right. You never attended any meeting to  
6 resolve it informally?  
7 A No.  
8 Q Now, also did you--I think we have established--in  
9 terms of the subdivision you admit you never  
10 advanced any costs for any subdivision  
11 development? You never offered to pay anything to  
12 have the Marcus Wells tank?  
13 A No, sir, but I understand we will have to do  
14 that to get the water.  
15 Q You also understand that you--did you ever  
16 advance the cost to put in the lines? Did  
17 you ever go and say here is the check and  
18 offered--not for the tap but for the cost of  
19 installing the lines?  
20 A Well, my answer to that is we are only 200  
21 feet from the water main with six taps with  
22 the procedure that the water board does 200  
23 per tap, that would be 1200 feet of water  
24 line.

1 Q Are you aware of the state regulations say 50  
2 feet?  
3 A No, sir, but with six taps that would be 300  
4 feet and I'm only asking for 200.  
5 Q Well, I'm saying you never tendered any  
6 money?  
7 A We ran our own water line. And the tap fees,  
8 they didn't ask for any money.  
9 Q Are you saying you have got a water line all  
10 the way?  
11 A Within 200 feet.  
12 Q All right. So, you have not run the water  
13 line all the way to their line and neither  
14 have you tendered any money for the other 200  
15 feet?  
16 A We tendered the five tap fees.  
17 Q Yes, but not the money for the line?  
18  
19 A I wasn't aware that we had to pay for the  
20 line, that was never--  
21 Q Do you have any--you don't have any written  
22 procedures as to what the policy was do you?  
23 A No, sir, they don't either.  
24 Q Mr. Crum, if you sell lots off of this as you

1 have indicated you are doing now, there is  
2 not going to be--I mean if you start selling  
3 lots off then there is not going to be able  
4 to furnish water. I mean you would agree  
5 that we can't do that now?

6 A I will agree with that, sir, but we are only  
7 asking for six at this time.

8 Q I understand. But you still intend to sell lots?

9 A And we intend to put in the eight inch line  
10 to the Marcus Wells tower and fire hydrants  
11 and all of this, yes, sir.

12 Q All right, and you intend to advance that  
13 cost?

14 A Yes, sir.

15 Q Is there any reason why you can't do it now?

16 A Money.

17 Q Oh, I understand.

18 A \$225,000 plus 111 taps at \$3500 each, that is  
19 three quarters of a million dollars. I don't  
20 want to do that tomorrow.

21 Q Are you going to cease selling lots until  
22 such time as you can get that money?

23 A Really I couldn't say. If there is a problem  
24 with the three inch water line under the road

1 we can reinstall a six inch water line under  
2 the road if that is what they want.

3 Q Isn't that going to be something that is  
4 going to be a cost shoved off on the  
5 district?

6 A No, sir, we did that at our own expense and  
7 we can do that at our expense.

8 Q All right, let me ask you this, if I go up  
9 there and buy a lot from you tomorrow, I  
10 guess you would still sell me one, wouldn't  
11 you?

12 A I really don't know at this time.

13 Q And I buy a lot and there is not adequate  
14 water pressure from that Route 3 line, what  
15 do I do?

16 A Well, at this time if there wasn't adequate  
17 water pressure to serve the lot you would  
18 buy, then we wouldn't sell you the lot, sir.

19 Q Well, isn't it a fact that the only adequate  
20 pressure is down at the mouth of the hollow?

21 A That's the only place we are wanting taps at  
22 this time.

23 Q Well, I understand, but if tomorrow you  
24 changed your mind and decided I'm not such a

1 bad fellow and sell me a lot, where am I  
2 going to get water?

3 A Then we would run it from the tower to you,  
4 would be development procedure.

5 Q You would do that if I only have one lot, you  
6 are going to spend that money?

7 A Before we will sell lots that cannot be  
8 served at the elevation that this wouldn't  
9 take care of, yes, sir.

10 Q I want to talk about elevations a minute.  
11 Isn't it a fact that with elevations you have  
12 to have about a 100 feet higher in order to,  
13 like for example, if you have a tank at 800  
14 feet you can only service a house at about  
15 the 700 foot level because you have to have  
16 an extra 100 feet there in order to keep the  
17 30 psi up?

18 A Really I wouldn't know, I'm not an engineer,  
19 but I would say it would be less than that.  
20 It wouldn't have to be a 100 feet difference.

21 Q All right. But there has to be a difference?

22 A There has to be a some difference, yes, sir.

23 Q And since you were chairman for a number of  
24 years you are aware that we are required to

1 maintain 30 psig?

2 A That's right. But in some cases they don't  
3 do it.

4 Q Well, I understand but that is what they are  
5 supposed to do?

6 A That's right.

7 Q If I buy that lot in that subdivision of  
8 yours and I don't maintain the 30 psig then I  
9 can go to the PSC can't I?

10 A No. No, if you bought the lot the way I  
11 explained it, no, we are not going to sell  
12 any lots that wouldn't.

13 Q And as you go to the mouth of that hollow--  
14 let me reword that. What is the elevation on  
15 the Inez tank?

16 A I don't recall that.

17 Q So you really don't know whether the  
18 elevation from the Inez tank is even going to  
19 be adequate?

20 A What I was going by sir is the elevation of  
21 Benton Crum and the two other residences down  
22 the road, which are higher elevation and have  
23 adequate pressure.

24 Q Well, they are not here to testify today are

1           they?

2    A       We could have brought them I guess.

3    Q       So in other words whether that tank--that  
4           Route 3 tank is going to be adequate pressure  
5           you just really don't know?

6    A       I would take a chance on it if I had a water  
7           tap.

8    Q       And if you move even further up in that  
9           hollow in there it becomes more iffy doesn't  
10          it?

11   A       We aren't going to sell lots on up further in  
12          the hollow in the iffy situation, sir.

13   Q       So also since you were chairman for a number  
14          of years you were familiar with the  
15          requirements of fire protection, too?

16   A       Somewhat, yes, sir.

17   Q       As a matter of fact, even if you put a fire  
18          hydrant at the mouth of that hollow, where I  
19          think you indicate some houses were located,  
20          that is not going to be adequate pressure to  
21          serve that fire hydrant from the Route 3  
22          line?

23   A       I would say not, no.

24   Q       All right.

1 A But there is a fire hydrant there at Route 3.

2 Q I understand, but you admit that that  
3 subdivision even--at nowhere does it give  
4 adequate fire protection if you go it from  
5 Route 3?

6 A It would be within a 1,000 foot of a fire  
7 hydrant, so--

8 Q But not as it exists now?

9 A As it exists now.

10 Q Now, let's talk a minute, I think you  
11 indicated there was some conflict between you  
12 and some of the employees?

13 A Somewhat, yes, sir.

14 Q And are you saying that that is the only--are  
15 you saying that that is why you are being  
16 denied?

17 A I think that is a good part of it.

18 Q Now, of course, you know Craig Justice?

19 A Yes, sir.

20 Q Craig Justice, have you had any problems with  
21 Craig Justice?

22 A Not until this come up, no, sir.

23 Q All right. And as far as the other gentlemen  
24 that are complainants, you don't know of any

1 problems that any of the employees have had  
2 with them do you?

3 A What was the question again?

4 Q I'll reword it, it wasn't a very good  
5 question.

6 A It sure wasn't.

7 Q As far as the other people who are  
8 complainants with you in this case, you know,  
9 I believe your son and Mr. Walker, you don't  
10 know of any problems between them and any of  
11 the employees do you?

12 A None that I'm aware of.

13 Q Okay. Now in terms of that investigation  
14 that was with the secretary there, wasn't it?

15 A Yes, sir, Fayette Crisp.

16 Q Yes, and she doesn't make the decisions does  
17 she?

18 A No, sir, Mr. Cumbo did at that time.

19 Q I understand. And, as a matter of fact, she  
20 was exonerated?

21 A They said there was no criminal intent, I  
22 believe is the way it was--

23 Q Actually exonerated, wasn't she?

24 A I guess so, yes, sir.

- 1 Q Yes, sir. Now, I believe there is another  
2 subdivision even east, is that correct?
- 3 A No, sir.
- 4 Q You and Mr. Walker have a trailer park?
- 5 A Developing one, yes, sir.
- 6 Q And that has been over a period of time; is  
7 that correct?
- 8 A Yes, sir.
- 9 Q And that trailer park is, I don't guess will  
10 be quite shown on that aerial photograph  
11 would it Mr. Crum?
- 12 A No, sir.
- 13 Q It would probably be all to the south?
- 14 A Right.
- 15 Q Southwest; is that correct?
- 16 A To the south.
- 17 Q Yes, sir. And you all have had no problem  
18 getting water service from the Water District  
19 for that subdivision?
- 20 A Yes, sir, we have.
- 21 Q All right, but they have worked with you and  
22 they are trying to correct it?
- 23 A After a while, yes.
- 24 Q They are working with you, aren't they?

1 A Somewhat, yes.

2 Q All right. You don't have any complaints,  
3 although it may not be as fast as you would  
4 like, you don't have any complaints with the  
5 way they have treated you on that trailer  
6 park do you?

7 A No, sir.

8 Q Why would they treat you differently on the  
9 trailer park than they would on this Eden  
10 West Subdivision?

11 A There is a whole lot more money involved with  
12 the Eden West.

13 Q All right, it is expense. And certainly with  
14 a water district that is a legitimate  
15 criteria; isn't it?

16 A I suppose.

17 Q Now, on this discrimination, you know Mr. Jim  
18 Booth?

19 A Yes, sir.

20 Q And Mr. Booth in developing his property has  
21 complied with the regulations hasn't he?

22 A I'm not aware of what you are talking about,  
23 I couldn't say.

24 Q All right, and I believe at the intersection

1 of 645 and Route 40 there is a gentleman  
2 named Redwine who has put in a grocery store,  
3 was putting in a supermarket or something?

4 A Yes, sir.

5 Q And he has complied with the requirements of  
6 the district, hasn't he?

7 A I have no idea, sir, I'm not--

8 Q And, of course, everybody in Martin County  
9 knows Gary Endicott?

10 A Yes, sir.

11 Q And he has complied with the subdivision  
12 requirements?

13 A I have no idea, I don't know whether the  
14 subdivisions--I'm not an inspector for  
15 subdivisions of whatever, I have no idea.

16 MR. ADAMS:

17 Well, I think that is all I have at this  
18 time, Your Honor. I'd like to go over  
19 there and get my exhibits, the ones that  
20 are not introduced.

21 HEARING OFFICER SHAPIRO:

22 Mr. Wuetcher?  
23  
24

1 CROSS EXAMINATION

2 BY MR. WUETCHER:

3 Q Good morning Mr. Crum.

4 A Good morning.

5 Q I must admit that I'm totally confused where  
6 everything is now. Maybe you can explain a  
7 few things for me, starting at State Route 3  
8 there is a water main that is running down  
9 the road, you can go ahead and stay at your  
10 desk, we're not going to go into too much  
11 detail. And I'll try to speak up for the  
12 court reporter. There is a six inch water  
13 main that runs along the route of State Route  
14 3?

15 A North-south on State Route 3.

16 Q North-south, and what side of State Route 3  
17 is it on?

18 A It is on the west side.

19 Q The west side, that would be the--

20 HEARING OFFICER SHAPIRO:

21 Just a minute, State Route 3 is the road  
22 that is shown to the right of the four  
23 lane highway?

24 A 645.

1 HEARING OFFICER SHAPIRO:

2 I believe it is 645.

3 MR. WUETCHER:

4 I believe it is labeled on the exhibit  
5 already.

6 Q Okay. Now, there are lines that have been--  
7 you stated before that there are taps in the  
8 north part from customers who are living  
9 along State Route 645 that connect into the  
10 line that is on State Route 3?

11 A That is the only water line, so anyone that  
12 has water, probably 21 to 25 residents on the  
13 west side of 645 have water from Route 3.

14 Q Okay. And those lines, do you know where the  
15 metering points are for those lines? And by  
16 --let me clarify that a little bit more, are  
17 the metering points directly next to--

18 A No, no, they are at the residents on the west  
19 side.

20 Q They are at the residents. And the service  
21 lines that lead from there are lines that  
22 have been donated or deeded to the Water  
23 District?

24 A I suppose so, yes, I really don't know

1           whether they have been deeded or donated or  
2           whatever, but--

3       Q     And you are saying the metering points are  
4           not at the point of tap to the six inch main?

5       A     No, sir, they are at the residents that they  
6           serve.

7       Q     And to your knowledge do you know what the  
8           general water pressure is along State Route  
9           Number 3?

10      A     I have no idea.

11      Q     Now, you had mentioned before that there was  
12           --the line that goes north-south along State  
13           Route 3 is connected to the water tank, the  
14           Inez water tank?

15      A     There are two water tanks in Inez, yes.

16      Q     And for purposes of the record where--the  
17           Inez water tank is where?

18      A     It would be southeast approximately one mile.

19      Q     Okay, now, going back over here, there is a  
20           line--State Route 40 is labeled on this map  
21           and there is a six inch line that runs along  
22           it?

23      A     Right.

24      Q     Does that line connect in any way to the main

1           that runs along State Route 3?

2    A       It is connected at a pump station just to the  
3           southeast just off the map there.

4    Q       Okay, and it is--is it--it is connected to a  
5           pump station, it is not direct--

6    A       The Route 40 line is, and a feeder line also  
7           comes from Route 3 to the pump station, so it  
8           is fed by two lines.

9    Q       Okay.

10   A       The Route 3 line and the Route 40 line.

11   Q       Now, you have proposed--well, you have already  
12           built a three inch main that would run under State  
13           Route 645 over to the existing six inch main?

14   A       No. It is to Rockcastle Creek.

15   Q       Okay.

16   A       Which is--

17   Q       It is indicated on the map right here?

18   A       Right.

19   Q       Okay.

20   A       So that is about approximately 100 to 150  
21           feet from Route 3.

22   Q       So I can understand correctly the lots that  
23           you are seeking service for, are they--are  
24           each of those lots along 645?

1 A The lake area on the--just where the Eden  
2 West Subdivision, the end of that, one is  
3 just to the south of the end of the lake, the  
4 other is to the north of the dam end of the  
5 lake.

6 Q And so I guess what I'm trying to find out is  
7 these lots are not all along Route 645?

8 A No, sir, they are into the west.

9 Q The interior. So the main that you would be  
10 --or that you have constructed and you want  
11 to have connected to the six inch main is  
12 running under the road and then into the area  
13 that is--

14 A Right, and to the--within 50 feet of the  
15 houses that are already built there.

16 Q So, the lots that would be served, you are  
17 going to connect a service line to the main  
18 that you have already constructed?

19 A That's all that would have to be done and  
20 connected out Route 3.

21 Q And again the size of that main is three  
22 inches?

23 A Three inches.

24 Q When you first--before you began construction

1 of the three inch line did you have the plans  
2 for that line reviewed or approved by Martin  
3 County Water District?

4 A No, sir, I did not.

5 Q There is no submission to the District to  
6 insure that it met all the District's  
7 engineering and administrative  
8 specifications?

9 A Well, I talked to Mr. Justice and he was  
10 aware that we were doing it, and it was  
11 inspected, supervised by Inez Wastewater  
12 Superintendent, Mr. Munsie, and, as far as I  
13 know, they showed no interest in doing any  
14 checking or inspecting or whatever.

15 Q Now, as I understand it the three inch line  
16 that you have constructed you plan on  
17 donating that to the District once the tap is  
18 made to this six inch main?

19 A Yes, sir. And all the other, probably 500 or  
20 600 feet of line that has been installed.

21 Q Who constructed the three inch main, what  
22 firm?

23 A Say again?

24 Q Who constructed the three inch main?

- 1 A We did that ourself.
- 2 Q Did you hire a contractor?
- 3 A Yes, sir, and supervised.
- 4 Q Who was the contractor?
- 5 A I don't recall the name, but it was a local  
6 contractor in Inez.
- 7 Q Do you know if that contractor had done work  
8 for the Water District previously?
- 9 A I really don't know, I'm not aware of that.  
10 The contractor that did the road bore was  
11 from Greenup, I can't recall his name, but he  
12 has done work for the water company  
13 previously.
- 14 Q And when the--you had to get--I assume you  
15 had to get the approval of the Transportation  
16 Cabinet or the Transportation Department in  
17 order to do the bore under 645?
- 18 A Yes, sir, that was all done and bonded.
- 19 Q When was that done?
- 20 A I would say probably February or March, I'm  
21 not sure on the exact date.
- 22 Q Of 1999?
- 23 A Yes, sir.
- 24 Q You had mentioned before that you could

1 change the size of the--or you and the other  
2 applicants would be willing to change the  
3 size--

4 A We can reconfigure the lines if necessary to  
5 go to a six inch line. It would be  
6 expensive, but it could be done.

7 Q And so I understand completely now, the area  
8 that is west of State Route 3 that you plan  
9 on having--on placing the--on which the  
10 district--you want the district to place its  
11 portion of the extension, that is on a right-  
12 of-way that you already own?

13 A In fact, we have two right-of-ways deeded  
14 with the property Eden West that the firm  
15 owns, yes, sir.

16 Q And its the complainants contention or  
17 intention to go ahead and deed that to the  
18 Water District, the lines constructed?

19 A That would be no problem, right-of-way or  
20 line or whatever.

21 Q Have you at any point submitted any type of  
22 plans for your subdivision development or  
23 your proposed development to the Water  
24 District at all?

1 A No, sir, I have not.

2 Q Were there any discussions with the District  
3 at any point concerning possible development  
4 of that area?

5 A Yes, sir, and it was also discussed with Mr.  
6 Bob Taylor, the water company engineer, and  
7 he gave us a preliminary estimate that we had  
8 on doing the complete, with fire hydrants and  
9 the whole thing, which we plan later to do,  
10 of about \$211,000.

11 Q Did you, yourself, commission any type of  
12 engineering study for the needs for the  
13 proposed engineering, the proposed  
14 subdivision development?

15 A Say that again please?

16 Q Okay. Did you or any of the other  
17 complainants, either individually or as a  
18 group, commission any type of engineering  
19 study to determine exactly what improvements  
20 need to be made both within the proposed  
21 subdivision and by the Water District in  
22 order to provide service to that proposed  
23 subdivision?

24 A I talked with Mr. Robert Taylor the engineer

1 for Martin County Water.

2 Q You say you talked to him, was that just--I  
3 mean, did you retain his firm to do any type  
4 of work for you?

5 A No, not at the time. He gave us an estimate  
6 on what it would take to service the complete  
7 subdivision.

8 Q The exhibit that was introduced by the  
9 District that had a subdivision plat, that is  
10 a proposed plat, it hasn't been filed; is  
11 that correct?

12 A Right, preliminary plat.

13 Q So, the proposed subdivision is still, even  
14 now, in its planning stage, it hasn't gotten  
15 to the point where the lots have been laid  
16 out?

17 A Right. No.

18 Q Based on your experience as a commissioner  
19 with the Water District, have there in the  
20 past when someone came in for a water main  
21 extension, was it the policy of the  
22 Commission to go ahead and either do the  
23 entire construction itself or take donation  
24 of an entire line?

1 A Usually the water company did the complete  
2 construction.

3 Q It wasn't--did you--how frequent was it that  
4 you would have someone proposing that they do  
5 part of the work and the District do the  
6 other part of the work?

7 A Well, one instance there on 645 a Mr. Priest  
8 that we were talking about here that has  
9 water at 805 elevation, he bought the line,  
10 the water company helped lay the line and  
11 whatever for, I would say, 52/100 of a mile  
12 from the Bobby Hall line, which is an inch  
13 line. The water company and Mr. Priest  
14 participated in that for him to get water.  
15 That is a new home that has just been  
16 constructed on the west side of 645 probably  
17 a year and a half or two years ago, maybe  
18 three.

19 Q Okay. Did you ever have an instance where  
20 someone constructed a portion of a line and  
21 then said the District construct the rest of  
22 the portion from where your main is located?

23 A From the main or whatever?

24 Q Yes, sir.

1 A Well, probably 20 years ago I constructed another  
2 line to three or four houses and then donated the  
3 line to the water company to obtain water that  
4 wasn't presently available in that area.

5 Q When you say you constructed, I guess what I'm  
6 trying to find out is that you have something  
7 where you--where the applicant for service  
8 constructed a portion of a line and then said the  
9 District is required to construct the remaining  
10 portion of the line, so you actually have two  
11 different entities constructing the line?

12 A None that I'm aware of.

13 MR. WUETCHER:

14 Thank you.

15 HEARING OFFICER SHAPIRO:

16 Mr. Crum, before you leave there may be some  
17 redirect and I have some questions I want to ask  
18 you also. Where are the six lots located on that  
19 aerial map? Are they in the Eden West  
20 Subdivision?

21 A Yes, sir. Two or three are at the end of the  
22 lake where it says subdivision, on the end of  
23 that. The other is at the dam area to the  
24 northwest.

1 HEARING OFFICER SHAPIRO:

2 Now, the lake, would the lake be that lighter  
3 area?

4 A At the end where it says Eden West  
5 Subdivision there just at the end of that.

6 HEARING OFFICER SHAPIRO:

7 That's a lake that is shown on that aerial photo?

8 A Yes, sir.

9 HEARING OFFICER SHAPIRO:

10 The light area, would that be the light area or  
11 the dark area?

12 A This is the lake area here, it would be in  
13 this vicinity.

14 HEARING OFFICER SHAPIRO:

15 It's in the light area?

16 A Right.

17 HEARING OFFICER SHAPIRO:

18 And are the lots adjacent to one another, the six  
19 lots?

20 A Close, yes, sir. Two are on the northwest  
21 side, the others are on the south side of the  
22 lake.

23 HEARING OFFICER SHAPIRO:

24 And there is a--you have a line, I think you said

1 a three inch line that runs from the subdivision  
2 property to within 200 feet of Route 3?

3 A Yes, sir.

4 HEARING OFFICER SHAPIRO:

5 And that is the one that crosses under Highway  
6 645?

7 A Right.

8 HEARING OFFICER SHAPIRO:

9 And it is your--and that line crosses property  
10 that is owned by the developers of Eden West  
11 Subdivision?

12 A Yes, sir.

13 HEARING OFFICER SHAPIRO:

14 And the 200 feet that it would have to traverse is  
15 likewise owned by the developers of Eden West  
16 Subdivision?

17 A Yes, sir. What these were were right-of-way  
18 to that property before 645 was constructed.  
19 Then 645 separated the property, but that was  
20 the entrance to--

21 HEARING OFFICER SHAPIRO:

22 When you say right-of-way, are you talking about a  
23 road right-of-way?

24 A Yes, right; yes, sir.

1 HEARING OFFICER SHAPIRO:

2 Okay. So, the three inch line, then, runs down  
3 the old road, crosses under 645 and continues  
4 along an old road to within 200 feet of Route 3?

5 A Well, not exactly. It comes by the lake  
6 under 645 and across the field there to  
7 Rockcastle Creek where the right-of-way goes  
8 on up to Route 3, a 25 foot right-of-way.  
9 And then just south of the lake there is  
10 another 25 foot right-of-way that joins Route  
11 3.

12 HEARING OFFICER SHAPIRO:

13 But in any case, the three inch line crosses  
14 property that is owned by Eden West Subdivision?

15 A Yes, sir.

16 HEARING OFFICER SHAPIRO:

17 And the--it goes to a point which is within 200  
18 feet of Route 3 where it ends at a right-of-way  
19 that runs--an existing right-of-way that runs to  
20 Route 3?

21 A To Route 3, to the water main, yes, sir.

22 HEARING OFFICER SHAPIRO:

23 Is that existing right-of-way on private property  
24 or is that a public right-of-way?

1 A It is owned--it was part of the Cale Brange  
2 is the name of the area, it was part of that  
3 property.

4 HEARING OFFICER SHAPIRO:

5 So, it is all within private property, it is on a  
6 public road?

7 A Right, no, it isn't used for that any more.  
8 Since 645 went through there is no need to.

9 HEARING OFFICER SHAPIRO:

10 Any redirect?

11 MR. MCGUIRE:

12 No, Your Honor.

13 HEARING OFFICER SHAPIRO:

14 Thank you Mr. Crum, let's take about ten minutes.

15 (OFF THE RECORD)

16 HEARING OFFICER SHAPIRO:

17 Back on the record.

18 MR. ADAMS:

19 If it please the court, I neglected to introduce,  
20 I think it was Exhibit Number 9, into the record.  
21 I would move the introduction at that time.

22 HEARING OFFICER SHAPIRO:

23 Same objection?

24

1 MR. MCGUIRE:

2 Same objection.

3 HEARING OFFICER SHAPIRO:

4 Overruled.

5 (EXHIBIT SO MARKED: Defendant Exhibit No. 9)

6 HEARING OFFICER SHAPIRO:

7 Okay. Mr. McGuire you want to call your next  
8 witness?

9 MR. MCGUIRE:

10 I call Craig Justice.

11 (WITNESS DULY SWORN)

12

13 The witness, TIMOTHY CRAIG JUSTICE, having first  
14 been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCGUIRE:

17 Q Will you please tell us your full name?

18 A My full name is Timothy Craig Justice, Craig,  
19 C-r-a-i-g.

20 Q Mr. Justice, where are you employed?

21 A I'm employed at the Martin County Water  
22 District.

23 Q And what is your position there?

24 A I'm the Operations Manager.

1 Q And how long have you been with them?

2 A Since the 2nd day of September, 1997.

3 Q And as such, who do you report to?

4 A Well, the way it is set up I report to the  
5 Board, to the Water Commission.

6 Q How is the structure there with the  
7 Superintendent, how does the Superintendent  
8 fit in?

9 A We are in--I think the structure the way it  
10 was set up was the Board, Operation Manager,  
11 the Superintendent below that, but I've  
12 always had more of an open door policy that  
13 more or less--I mean, anybody would know that  
14 Niles would have much more experience in this  
15 situation than I would with water and I'm not  
16 going to, you know, thumb my nose at 30 years  
17 of experience, I mean, the new kid on the  
18 block.

19 Q And Niles is the Superintendent?

20 A Yes, he is.

21 Q And he has been there how long?

22 A I think since 1968, they can correct me if  
23 I'm wrong.

24 Q If I can show you what was identified as our

1 Exhibit 1,--

2 A Uh-huh.

3 Q --can you tell the Hearing Officer why that  
4 home does not have water?

5 A Well, because there is no water main to  
6 supply that hollow. I forget--you are the  
7 Hearing Officer, I'm sorry.

8 Q Is there any reason that water cannot be  
9 supplied to that house?

10 A Well, are you asking for my opinion? From  
11 what I understand, the elevation may be a  
12 problem. The--that house itself, there may  
13 not be a problem to get water to that house  
14 itself. I can't say any more than that I'm  
15 not an expert on the--

16 Q Okay. The only thing you mentioned was the  
17 elevation. Do you know what the elevation of  
18 that house is?

19 A No, I don't.

20 Q Do you know what the elevation of the homes  
21 directly to the north are?

22 A No, I don't.

23 Q Would you agree that this State Route 645  
24 that this is going up hill to go north and

1 tops a hill up here?

2 A Yes, it does, probably two miles on down the  
3 road it tops a hill.

4 Q And, so, would you agree that these houses  
5 are at least equal or of greater elevation  
6 than these down here?

7 A That would be an assumption on my part to say  
8 so. What can throw you off with the  
9 construction of these new four lane roads  
10 some of the--some aspects of the road will be  
11 much higher grade on the mountain than some  
12 of the other areas, and you may look at it  
13 and say, well, that's not that high at all,  
14 and where, in fact, it could be quite a bit  
15 higher. Again, I have no expertise in that.

16 Q So, while you may mention that that may be a  
17 problem, it's not something the water company  
18 has verified that it is a problem?

19 A Not to my knowledge.

20 Q And nobody has gone out there and taken an  
21 elevation?

22 A Not to my knowledge.

23 Q And the lines that service the residents to  
24 the north that come from Route 3, Mr. Crum

1 testified that those homes were serviced by a  
2 one inch line?

3 A I would agree to that because I don't know  
4 myself. That is prior history, prior to my  
5 employment and I'm assuming he is correct.

6 Q In your experience with the water company,  
7 are there many residents through your 3,000  
8 customers who are serviced on a one inch  
9 line?

10 A To be honest with you, I don't know how many  
11 is served by a one inch line, I can't speak  
12 with any clarity on that.

13 Q Mr. Crum's testimony was that the six  
14 residential taps that we are asking for that  
15 the line has been run is a three inch line  
16 encased inside a five inch line.

17 A Uh-huh.

18 Q Would that normally be adequate for six  
19 residents?

20 A And there, again, I need to refer to the fact  
21 that I'm not an expert on this situation. I  
22 would assume so, but you know the story about  
23 assuming, you can get into trouble.

24 Q So, you have no information that you could

1 tell this Hearing Officer in your capacity as  
2 the highest ranking officer in the Martin  
3 County Water District that it would not serve  
4 those six residential taps?

5 A Repeat that please?

6 Q You have no information you can testify to  
7 that the Martin County Water District cannot  
8 supply residential taps, these six taps?

9 A In a word, no.

10 MR. McGUIRE:

11 That's all I have.

12 MR. ADAMS:

13 I'm just going to go ahead and take him as I would  
14 on direct.

15 HEARING OFFICER SHAPIRO:

16 That's up to you. You can do either or reserve  
17 the right to take him later.

18 MR. ADAMS:

19 I'll just go ahead now, Your Honor.  
20

21 CROSS EXAMINATION

22 BY MR. ADAMS:

23 Q Craig, you--I think in their direct examination  
24 you were asked about some checks that were

1 tendered in June?

2 A Uh-huh.

3 Q Did you get those on the date that they were  
4 dated?

5 A No, I did not.

6 Q When were those first handed to you?

7 A The 18th day of September.

8 Q And what were you told?

9 A Well, I went down to Mr. Crum's dealership to  
10 get the payroll signed and as he was signing  
11 the payroll he gave me this envelope with  
12 these checks in it. And as I recall, it was  
13 to get Benton water, you know, that was more  
14 or less the talk because Ben was building a  
15 house and everybody was glad to see him get  
16 to build a house. And when--to answer your  
17 question that was the conversation then.

18 Q Do you know what they were for?

19 A Well, it was my understanding that was for  
20 water taps, but I didn't know what to do with  
21 them. When I got back to the office and I  
22 talked to Mr. Cumbo about the situation  
23 because I was fairly familiar with where the  
24 water lines were in the county because it is

1 a small county and you kind of keep up with  
2 these things. But, you know, this was  
3 knowledge that I had over the years. And  
4 Niles explained to me that we cannot accept  
5 taps where there is not a water main. And--

6 Q I believe then you wrote a letter that has  
7 been introduced into evidence to Mr. Crum?

8 A Uh-huh.

9 Q And did he ever come--first, he never came to  
10 any meeting to clarify that, did he?

11 A No, sir, he didn't. For the next four months  
12 of '98 the--I was under the assumption that  
13 he would bring it up at the water meeting  
14 about what their plans were for that  
15 subdivision and that never happened. And  
16 then when the local political scene changed  
17 and Mr. Crum was no longer a part of the  
18 board I felt--I didn't--I guess it was  
19 ignorance on my part on what to do and that's  
20 when I returned the checks in January.

21 Q And now, you were asked about the elevation?

22 A Uh-huh.

23 Q Do you know if the--if you came from Route 3  
24 it had to be serviced through the Inez tank?

1 A Uh-huh.

2 Q Is it your understanding there is some question  
3 about whether there would be sufficient pressure?

4 A Right.

5 Q Did Mr. Crum ever come to the board and  
6 indicate that there would be sufficient--  
7 through any documentation--that there would  
8 be sufficient pressure?

9 A Not that I'm aware of.

10 Q Was the return because of any dislike of Mr.  
11 Crum or because you were concerned about the  
12 pressure?

13 A Pardon me, can you repeat that?

14 Q Were the checks returned because you had a  
15 personal vendetta against Mr. Crum or because  
16 there was some concern about the pressure?

17 A Oh, no, not about any personal problem with  
18 Mr. Crum or anything like that. It was my  
19 worry and, again, I guess you could say I was  
20 a freshman at this position, is what  
21 liability the Water District would have if we  
22 accepted these tap fees and then didn't  
23 produce water. So, those fees stayed in our  
24 safe there at the office until--and I had

1 assumed that it would be brought up. And  
2 finally--

3 Q During the time--how long have you been at  
4 the water commission?

5 A September 2, 1997, was my first day.

6 Q And did Mr.--did you go to all the meetings,  
7 as far as you know?

8 A Yes, sir.

9 Q Did Mr. Crum ever disclose to the water commission  
10 of which he was Chairman that he was trying to get  
11 funding from rural water for his subdivision?

12 A Not that I'm aware of.

13 Q When did you first find out that Mr. Crum was  
14 trying to use the water board to get funding?

15 A It was the spring of last year which would  
16 have been the spring of--late winter or early  
17 spring or '98, I believe, is when we had  
18 information that had come our way that they  
19 were looking at maybe adding that to a  
20 particular project. Currently, in Martin  
21 County we are--have been awarded a site for a  
22 federal prison, and part of that is getting  
23 water to that prison and that is in another  
24 part of the county. And from what I

1 understand, they were--Mr. Crum had asked if  
2 that subdivision could be a part of that  
3 project about getting water. Now, that's my  
4 understanding.

5 Q But at least that was never disclosed to the  
6 board?

7 A Not that I know of, not that I'm aware of,  
8 no.

9 Q And there was some talk about discrimination.  
10 I believe in the next hollow there was a  
11 gentleman that had some water that was  
12 discussed?

13 A Uh-huh.

14 Q And what was his name?

15 A Bobby Hall, I believe is the gentleman.

16 Q Now, was that due to highway relocation?

17 A That's my understanding, it was because of  
18 the 645 construction.

19 Q And, so, the state did all of that?

20 A That's my understanding, yes.

21 Q And I think farther down is the Fitch family?

22 A Yes, sir.

23 Q Is that the same situation we have here?

24 A Yes, there--I think originally there was two

1 homes in that hollow that were as a result of  
2 the highway. And the--it is my understanding  
3 that the Highway Department did the  
4 installation of a conduit to put a water line  
5 in. And then subsequently as time went by  
6 over the next--I think the road was completed  
7 in 1982 or '83, and since then there has been  
8 other homes that have been built there and  
9 they have been added on to that water line  
10 that was--

11 Q That was the Highway Department?

12 A Uh-huh.

13 Q Doing that--that was the Highway Department's  
14 doing?

15 A They--when they constructed 645 to get water  
16 to--in order for the two people that had  
17 water already on the relocation of the water  
18 --of those homes when the highway was built  
19 that was the Highway Department's  
20 responsibility, as I understand it.

21 Q Now, I think Mr. Crum indicated he did bore  
22 under the road with a line.

23 A At the Eden West site?

24 Q Yes.

- 1 A Yes, that is my understanding.
- 2 Q And then there is some distance between that  
3 and the Route 3 line; is that correct?
- 4 A Yes.
- 5 Q And did he ever come to you with any  
6 easements?
- 7 A No, not with easements as such. We had a  
8 conversation at an earlier time that he said  
9 that he had informed me that easements were  
10 no problem.
- 11 Q But did he ever come with the construction?
- 12 A No, sir.
- 13 Q And about what is your estimate of the  
14 distance between the line, how much line  
15 would he have to run?
- 16 A Well, from what I understand, where the road  
17 bore stops, where they have the water line  
18 installed at this point to the Route 3 and,  
19 again, this is an opinion because I have not  
20 done an actual survey of it, but it is in the  
21 neighborhood of 400 to 600 feet.
- 22 Q Okay. Now, I've got--the Route 3 water line  
23 serves a fairly large area.
- 24 A Yes, it does. It--from Inez to the Lawrence

1 County line which is approximately ten miles,  
2 that--and then it--about 4 1/2 miles north  
3 from Inez it goes over on to 1884 which ties  
4 back into Route 40. But that line has a lot  
5 of customers on it.

6 Q Now, current elevation, is the Marcus Wells  
7 tank much better situated to supply that?

8 A Well, again, I'm not speaking as an expert, I  
9 would think it would be a much better site to  
10 bring water from because of its higher  
11 elevation.

12 Q And the--in terms of this supplying Mr. Crum,  
13 why is that a concern? Is it because of the  
14 subdivision or--

15 A Well, our concern is--

16 MR. McGUIRE:

17 Objection, leading.

18 HEARING OFFICER SHAPIRO:

19 Yes.

20 MR. McGUIRE:

21 If he's going to make the same--we can  
22 refer to the same rules.

23 HEARING OFFICER SHAPIRO:

24 I'll sustain the objection.

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MR. ADAMS:

Okay. I'll reword it, Your Honor.

Q Number one, are there concerns about just going ahead and letting him hook on?

A Well, yes. The concern is, number one, is the elevation problem because we have to abide by the PSC rules of 30 pounds of pressure at the meter. The other concern is if we have these five homes or six homes, I've heard two different mentioned today, if we have these homes served and more and more people purchase land is the gun put to our head, so to speak, about furnishing those people water, I guess, is the bottom line.

Q And I think, if I could have this marked as an exhibit--

HEARING OFFICER SHAPIRO:

This will have to be remarked as Defendant's exhibit.

MR. ADAMS:

Yes, remark it, whatever the next exhibit is.

HEARING OFFICER SHAPIRO:

Just mark out what he has got on it.

1 MR. ADAMS:

2 Just put ten on it.

3 Q I'll show you a photograph similar to Exhibit  
4 Number 10, what is that the sign of?

5 A Well, that is the sign that says lots of lots  
6 for sale and a phone number.

7 Q And that is Mr. Crum's telephone number?

8 A Yes, it is his business phone number.

9 HEARING OFFICER SHAPIRO:

10 Hasn't this been introduced?

11 MR. ADAMS:

12 It's a similar one, Your Honor, not  
13 exactly.

14 Q And that sign is still up there?

15 A Yes, to my understanding it is.

16 Q So, that is why there is a concern about  
17 furnishing water to the subdivision?

18 A Right.

19 Q Does--would you all have the resources to do  
20 the Marcus Wells tank project on your own?

21 A No, the Water District wouldn't have the  
22 resources to bring it from the Marcus Wells  
23 tank down the hollow, no, sir.

24 Q Now, I'm going to--just mark this the next

1 sequel. I want to show you a photograph,  
2 Defendant's Exhibit Number 11, and is that a  
3 picture you took at my request?

4 A Yes, it is.

5 Q And with the red marker, so the judge can look at  
6 it, can you mark the direction--what direction is  
7 that looking?

8 A Okay. This is from 645 looking across  
9 Rockcastle Creek to Route 3.

10 Q Okay. Can you put Route--mark Route 3, would  
11 you want him to come around here?

12 HEARING OFFICER SHAPIRO:

13 No, that's okay.

14 Q You mark Route 3, and is this--are we looking  
15 standing on 645?

16 A Yes, sir.

17 Q Put 645 under that railing, big numbers  
18 there. And I notice that is--that is the  
19 distance where it would have to run?

20 A Yes, that is my understanding. This is  
21 pretty close to where the road bore occurred.

22 Q Okay. Did they ever come and say we've got this  
23 line run now?

24 A Not to my knowledge, as far as addressing the

1 board, no.

2 Q Did they ever tell you they had a line run?

3 A Well, we had talked in the fall, and John was  
4 talking about they had had an experience and  
5 difficulty in getting the road work completed  
6 and we just talked in general terms like  
7 that.

8 Q All right. They never come to you and said  
9 hey, we've got it done, hook us on?

10 A No, sir. Well, now, wait a minute, let me  
11 rethink about that. He came--Mr. Crum came  
12 to the office the day after our March  
13 meeting, which I believe was the 26, and  
14 wanted to talk about getting water.

15 Q Okay. Did he say he had a line completed?

16 A I believe he said he did have the roadwork  
17 completed, I believe.

18 Q To Route 3, to your Route 3 line?

19 A No, not to Route 3 line, just the road bore.

20 Q Now, this is Exhibit Number 12 and I'd like  
21 for you to mark at the bottom what direction  
22 you are looking?

23 A Okay, this is just an opposite.

24 Q Well, put Route 3 down by that trailer.

1 A Okay.

2 Q That's the Highway?

3 A Uh-huh, that's 645.

4 Q All right, mark it. And is this the entrance  
5 to Eden West Subdivision?

6 A Yes, it is.

7 Q Okay. Just put Eden West Subdivision. Do you  
8 want me to hold--

9 HEARING OFFICER SHAPIRO:

10 That's fine.

11 Q So, as far as you know the line has never  
12 been run from the bore under the road to  
13 the--

14 A Route 3?

15 Q To Route 3?

16 A No, sir.

17 Q And you have never actually measured that,  
18 did you?

19 A No, sir.

20 Q What is your estimate of the distance?

21 A Between 400 and 600 feet.

22 Q Okay.

23 A That's taking into consideration you are going  
24 down grade and across the creek and back up the

1 grade.

2 Q So, you can't go like the crow flies?

3 A No, not on this line.

4 Q I want to show you what has been marked as

5 Exhibit Number 6, what is that?

6 A That is--this is the bulk of 645.

7 Q Now, put 645 on it.

8 A Okay. This is the entrance to Eden West.

9 Q Can you put Eden West? And does that show

10 how the--how the subdivision starts to rise

11 on the ground?

12 A Well, it shows an approach here going up to

13 Mr. Benton Crum's house.

14 Q I mean, it is hilly like, that elevations

15 change rather quickly?

16 A Uh-huh.

17 Q And I want to show you what has been marked

18 13, what is that?

19 A Okay. That's another picture from Route 3

20 looking over to the approach up to Mr. Crum's

21 house.

22 Q Mark Route 3 and put approach to Mr. Crum's

23 house?

24 A I'm going to put Benton down so we don't

1 get--

2 Q Okay. So, that's a fairly steep rise, it  
3 looks like, in elevation?

4 A Yes, it is.

5 MR. ADAMS:

6 I move the introduction of these  
7 exhibits, Your Honor.

8 HEARING OFFICER SHAPIRO:

9 Any objection?

10 MR. McGUIRE:

11 I've never seen them before.

12 MR. ADAMS:

13 Yes, you have, they were furnished.

14 MR. McGUIRE:

15 Here is the stuff you furnished me, I  
16 don't see them .

17 HEARING OFFICER SHAPIRO:

18 Take a look at them now and see if you  
19 have any objection.

20 MR. McGUIRE:

21 Let me see them anyway.

22 MR. ADAMS:

23 I don't care if you look at them. It  
24 was a supplemental list that you got

1 with them, it was a separate one, you  
2 should have, but go ahead and look at  
3 them, I don't care.

4 HEARING OFFICER SHAPIRO:

5 Why don't you take a look at them?

6 MR. ADAMS:

7 Yes, take a look at them.

8 MR. MCGUIRE:

9 No problem.

10 HEARING OFFICER SHAPIRO:

11 So ordered.

12 EXHIBITS SO MARKED: Defendant Exhibits Numbered  
13 10 through 14)

14 Q Have you had other developers who have developed  
15 property?

16 A Yes, we have.

17 Q And have they complied with the procedures of  
18 the board that you know of?

19 A Yes, they have.

20 Q Was there ever any problem with them?

21 A No.

22 Q Now, there was, I think, Mr. Crum and Mr.  
23 Walker have a trailer court?

24 A Yes, they do.

1 Q Have you all been furnishing service to that?

2 A Yes, we have.

3 Q Have they complied with your request for that  
4 whenever you asked them?

5 A Well, the--from what I understand, and,  
6 again, you will have to forgive my ignorance  
7 on this, but it is my understanding that the  
8 trailer courts have certain rules and  
9 regulations by the State Health Department.  
10 And there was some delay on getting some of  
11 that from the Health Department that  
12 prevented us from getting those first  
13 original five taps in a timely manner but  
14 those taps were made and then two more  
15 additional were made.

16 Q But there was never any problem to the water  
17 company about getting him taps on that?

18 A No.

19 Q In fact, I think they are doing some more  
20 development now on that end, aren't they?

21 A Yes, they are.

22 Q Has there been any problems between the water  
23 board and Mr. Crum on that?

24 A Well, I've not talked to Mr. Crum on that,

1 I've talked to Mr. Walker on the trailer--the  
2 additional trailer, and we have talked about  
3 that and have agreed on the time frame on  
4 what it is going to take to get those taps  
5 made. I think it is 22 additional taps.

6 Q So, you have worked with him on it?

7 A Yes, sir.

8 Q And you certainly have no personal feelings  
9 against Mr. Walker?

10 A No, sir.

11 Q And I believe on this aerial down here at  
12 Intersection 40 and 645, is there a  
13 development there?

14 A Actually, sir, it is not at that  
15 intersection, it is on below that  
16 intersection probably two more inches as it  
17 shows on the map where a new supermarket was  
18 constructed.

19 Q And has the developer complied with your  
20 request on that?

21 A Yes, they did.

22 MR. ADAMS:

23 I guess that is all I have.

24

1 CROSS EXAMINATION

2 BY MR. WUETCHER:

3 Q Just a few. Good afternoon, Mr. Justice.

4 A Good afternoon Mr. Wuetcher.

5 Q Let me start out by asking how many actual  
6 subdivision developments have been proposed  
7 that you have seen in Martin County the time  
8 you have been there?

9 A Two.

10 Q Two?

11 A Uh-huh.

12 Q And what is the usual process for those?

13 A Well, we--in April of 1998 we presented to  
14 the Board in March of '98 the development  
15 procedure process. And what precipitated  
16 that is we had a discussion with Mr. Taylor  
17 and some other folks from PDR to try to stem  
18 off the oncoming expected housing because of  
19 the new prison that is going to be located in  
20 Martin County. And we are assuming that  
21 there will be folks that will be moving to  
22 Martin County as a result of that prison and  
23 other reasons. So, the development  
24 procedures were drafted and approved and the

1 guidelines for that is such that the onus is  
2 on the developers to develop it to our  
3 standards and specifications.

4 Q Okay. So, essentially, you follow--or the  
5 District follows the procedures that are set  
6 forth in the water development procedures  
7 exhibit that was introduced earlier?

8 A Yes, it is.

9 Q Has that set of procedures been filed with  
10 the Public Service Commission?

11 A No, I don't think it has. As I was sitting  
12 over there in my chair earlier and I heard  
13 that brought up, I'm 100% sure it hasn't been  
14 and that, again, is ignorance on my part to--  
15 and I know ignorance is no excuse but it is  
16 the only excuse, I didn't know that we--our  
17 local board had to have this approved by the  
18 PSC.

19 Q So, I take it that is something that Martin  
20 County will be filing in the near future?

21 A As soon as I get back to the office.

22 Q The present Martin County Water District  
23 tariff lists two options for water main  
24 extensions. Are you familiar with those?

- 1 A I don't believe I am, sir.
- 2 Q Okay.
- 3 A I am familiar with what Mr. Cumbo has told me  
4 but as far as me--I don't believe I've seen  
5 the tariff that has it laid out, I can't say  
6 I have.
- 7 Q Okay. Has any pressure survey been done of  
8 the area that is shown on the map as far as  
9 pressures that are coming off of the six inch  
10 line that runs north to south along State  
11 Route Number 3?
- 12 A Along the area of where the Eden West  
13 property would be?
- 14 Q Yes, sir.
- 15 A Not that I'm aware of, no.
- 16 Q There has been made mention of a, I guess it  
17 is a Bobby Hall and a Fitch family, there is  
18 water service by both of those. Has any  
19 pressure readings been taken at the metering  
20 point for those two customers?
- 21 A Not by the Water District that I'm aware of.
- 22 Q Okay. Staying with those two customers for a  
23 second, they are served by one inch mains  
24 coming off a six inch main?

1 A I believe that is the case with the Bobby  
2 Hall, now on the Fitch family I'm not sure.  
3 Niles would have to tell you on that,  
4 anything I'd say would be a guess right now  
5 because I think I know but I can't say with  
6 any clarity.

7 Q Do you know if those one inch mains are on  
8 easements that have been granted to the Water  
9 District?

10 A I am under the assumption that when the new  
11 Kentucky 645 was constructed that they went  
12 through the proper procedures to relocate  
13 those folks and relocate those water lines.

14 Q So, going back to a question I asked Mr. Crum  
15 earlier, the metering point for those two  
16 customers is not near the six inch line but  
17 it is on the property of those two customers?

18 A Yes, I believe it is.

19

20 MR. WUETCHER:

21 That's all we have, thank you.

22 HEARING OFFICER SHAPIRO:

23 Any redirect?

24

1 REDIRECT EXAMINATION

2 BY MR. MCGUIRE:

3 Q Just a few. I guess there is some disagreement,  
4 and I walked out there and looked at the distance  
5 between where they run their lines. Did you  
6 actually go out and stand where Mr. Crum ran his  
7 lines, which would be on the east side of 645?

8 A You mean did I actually stand there and--no,  
9 sir, that is just a guess on my part.

10 HEARING OFFICER SHAPIRO:

11 Maybe I can clarify that. You estimated  
12 400 to 600 feet, you were estimating  
13 that from the--

14 A 645 to Route 3.

15 MR. MCGUIRE:

16 Okay.

17 HEARING OFFICER SHAPIRO:

18 645 to Route 3. In other words, from  
19 the bore to the highway?

20 A Uh-huh.

21 HEARING OFFICER SHAPIRO:

22 And you weren't estimating it from the  
23 creek to the highway?

24 A No.

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HEARING OFFICER SHAPIRO:

Do you recall Mr. Crum testifying that the existing line ran to the creek?

A At the road bore into the creek?

HEARING OFFICER SHAPIRO:

Well, not the road bore but the line that ran from the--ran from the road bore and terminated at the creek?

A Oh, I'm sorry, I must have missed that. I mean, I'm not going to refute that because it may very well be true.

HEARING OFFICER SHAPIRO:

I understand, but that is what his testimony was. And would that be--if that were the case he estimated that the distance left without a line to the road would be around 200 feet?

A Well, I would probably knock off 100 feet off my estimation and make it 300 to 500 feet instead of 400 to 600. And, again, these are all estimations.

Q We appreciate the estimates but what these people are just trying to get water and I don't think there is any question that Mr.

1 Crum was bringing the line over to you at  
2 something less than 200 feet. If it was  
3 within less than 200 feet from the six inch  
4 main, would you all run the last 150 or under  
5 200 feet to give connection to these six  
6 residences?

7 A I don't know if that would be a decision I  
8 would be able to make or if that would be a  
9 board decision, because this is not a typical  
10 situation.

11 Q Based upon the policies to provide water to  
12 other residents, is there any reason you can  
13 tell this judge why you wouldn't supply this  
14 home and the home that has been abandoned and  
15 the four empty lots at this point?

16 A Is there any reason why we wouldn't? There is no  
17 reason why we wouldn't. The concern is is there  
18 going to be adequate pressure there once the lines  
19 are filled with water. And the concern is that  
20 once more lots are sold that we are put on the  
21 spot to say, okay, Mr. XYZ, we will have to get  
22 you water now. That's our--I guess that is  
23 probably our main concern.

24 Q I guess everything you are saying, then, is

1 concern of what might happen or what might be  
2 but you've not done any study or pressure  
3 measurements or evaluations to where these  
4 are--maybe it is kind of like my son being  
5 afraid of something under the bed that is not  
6 there. You don't have anything hard, as far  
7 as the pressure problem, that you can tell  
8 this judge that you can't supply water to  
9 these residences?

10 A We haven't been asked to.

11 Q You have been asked to supply water.

12 A We have been asked to--when the conversation,  
13 as the conversation went by it was my  
14 understanding that they were going to go  
15 ahead and bring the water to Route 3, all the  
16 way to Route 3 and we would make a tap there.  
17 It was my understanding that that is what our  
18 talk was and that was in August or September  
19 of last year, I guess.

20 Q And are you saying you would do that?

21 A Well, that was what was talked about. Again,  
22 I feel this is something that the board  
23 should have to vote on because, like I said,  
24 this is not a typical situation.

1 Q Is there something that you all said that you  
2 would do if they brought the line to Route 3?

3 A I don't recall. I don't recall. I think  
4 when we talked at one time, and forgive me  
5 for not knowing the exact date, that we had  
6 told Mr. Crum that the best way to get Benton  
7 water was to connect into Route 3. And that  
8 was basically what the conversation was  
9 about.

10 Q And Denton is the one that has the house that  
11 is presently built?

12 A That's "Benton" with a "B."

13 Q Benton, I'm sorry, in the picture. There is  
14 also a house on the property that has been  
15 abandoned?

16 A Well, I don't know if abandoned is the  
17 correct word, I don't think it has ever been  
18 inhabited. There is a new house that--

19 Q They abandoned construction of it?

20 A Okay. There is a house--there is another  
21 house there, yes.

22 Q And it doesn't have water either?

23 A No, it doesn't.

24 Q Do you know if they--would you say that house

1 is 50% or 80% constructed?

2 A Oh, I don't know, I've never been on the  
3 property and never been invited to look  
4 inside or anything.

5 Q You've never seen it?

6 A Oh, I've seen it when you travel by it, but  
7 I've never been in it to say, yes, it is 60%  
8 completed or whatever.

9 Q You told the court earlier that you had not  
10 been there very long and that there were some  
11 political changes--

12 A Uh-huh.

13 Q --that happened and affected Mr. Crum's  
14 position?

15 A Yes, that's my understanding.

16 Q Would you elaborate and explain to the court  
17 about those political, your understanding?

18 A Well, the former County Judge was defeated in  
19 November, the new County Judge, from my  
20 understanding, when he took office Mr. Crum's  
21 term as Commissioner expired in December of  
22 1998, and the new judge, from my  
23 understanding, did not reappoint him and  
24 appointed another person.

- 1 Q And did you know about the investigation  
2 concerning the time sheets that were turned  
3 in?
- 4 A No, I wasn't employed at the water plant at  
5 that time.
- 6 Q Do you know--
- 7 A There was a splash in the local media about  
8 it and, again, this is a small town and you  
9 know, but I, as far as me being involved in  
10 that, no, that was prior to my employment.
- 11 Q Do you know if, in fact, at the time Niles  
12 was the one that approved the time sheet for  
13 payment?
- 14 A I have no knowledge either way.
- 15 Q But at the point you were there you took the  
16 payroll, had final say on the payroll, I  
17 guess that you took it to Mr. Crum to sign  
18 the checks.
- 19 A Right. I prepare the time cards to get them  
20 processed and then I would go find a  
21 Commissioner to sign the checks.
- 22 Q Do you know who was responsible for payroll  
23 prior to you?
- 24 A No, sir.

1 Q So, the day you walked in you don't know who  
2 did it the day before?

3 A No, I don't believe I do know who did it  
4 before. I'm assuming--well, no, that's just  
5 an assumption on my part, no.

6 Q And you have never--I guess it, you know, it  
7 seems like nobody ever talks to anybody, but  
8 you have never told Mr. Crum you needed him  
9 to bring documents to prove the easement.  
10 That wasn't the reason you didn't give him  
11 water, was it?

12 A Say that again please?

13 Q You never told Mr. Crum I need to see proof  
14 or documents that you have this easement?

15 A No, he had indicated to me that the easements  
16 were no problem.

17 Q And you never made a point that the water  
18 company in order to give water to him needed  
19 any further evidence that that would make any  
20 difference one way or the other?

21 A No. I was operating under the assumption that he  
22 would be addressing the board in the next few  
23 months about what their intentions were.

24 Q And regardless of whether it is 50 foot or 200

1 feet or 400 foot, you all have never said if you  
2 will pay to run the line the rest of the distance  
3 we will hook you up, regardless of what --I mean--  
4 well, we don't know what the distance is but  
5 whatever it is you all never told Mr. Crum if you  
6 will pay to have the rest of the line put in we  
7 will give you water?

8 A I'm sorry that I'm having a tough time  
9 understanding, could you say that one more  
10 time for me?

11 Q Well, there has been--we may not know exactly  
12 the distance and--but Mr. Crum said the line  
13 ran to the creek, but we do not know the  
14 exact distance on over to the six inch line.

15 A Uh-huh.

16 Q But you never at any time told Mr. Crum that  
17 if he would pay for the last bit of line over  
18 to your six inch line that you all would go  
19 ahead and hook him up?

20 A No, we told him--that never came up, no.

21 Q You have never given him any alternative to  
22 hook up these six residential properties  
23 except to spend \$211,000 and run one from the  
24 water tank?

1 A No, the water tank is down below you there at  
2 Marcus Wells tank.

3 Q The Marcus Wells tank, the only option you  
4 have ever given him to hook up these six  
5 residential taps is \$211,000 to hook up the  
6 six eleven taps?

7 A Well, no, now that is not an--that  
8 conversation never took place.

9 Q Okay. Well, have you ever given him any  
10 options at all as far as supplying water to  
11 Benton or to the other five properties that  
12 they gave you the tap fee for?

13 A The only alternative that we knew the best  
14 way to get them water would be to tap on to  
15 Route 3 and cross the creek. And I assumed  
16 that once they crossed the four lane that the  
17 creek crossing would be no problem, because  
18 it is a pretty small creek.

19 Q So, you are telling this Hearing Officer, as  
20 far as you knew, the creek crossing is not a  
21 problem, there is no reason not to supply  
22 water just to these six residential taps?

23 A Again, I want to stress, we don't have a  
24 problem, as I understand it, to get these

1 folks water if the elevation is such that  
2 they can have water that we are within our  
3 limits to have 30 pounds of pressure. What  
4 we don't want to get into is a situation  
5 where there is lots sold, sold, sold and  
6 people coming to our door saying we want  
7 water, we need water, we deserve water. And  
8 we are in the business, I mean, we want to  
9 see everybody get water, I mean, that is  
10 plain and simple.

11 Q Have you ever told anybody anywhere, to your  
12 knowledge in the Water District, that we'll  
13 supply you water but only on a deal that  
14 nobody builds abounds you and we don't ever  
15 have to give anybody else water?

16 A Not that I recall.

17 Q And when the man up the road on the one inch  
18 line was supplied water, since that time  
19 there has been other people added on next to  
20 him, I guess?

21 A Well, what Mr. Crum said earlier was that is  
22 the first time I had understood that, I never  
23 had asked how Mr. Priest had got water, but  
24 I'm assuming what he said is correct.

- 1 Q And if Mr. Crum testified, says that they  
2 don't intend to sell any lots up here before  
3 they work out a way to supply water to them,  
4 then you have no reason, you have no reason  
5 not to go ahead and give water to these six  
6 limited residential properties?
- 7 A I wouldn't see any problem--is it five or  
8 six?
- 9 Q I think it is six--
- 10 A Okay.
- 11 Q --that they gave you a tap fee for, the  
12 check, I think, added up to six tap fees.
- 13 A I wouldn't see a problem with that if it  
14 stops at that. I think you can understand  
15 our worry is as more and more lots are sold  
16 on up the hollow and is it going to be put on  
17 us to supply those people water.
- 18 Q Have you ever checked the record because of  
19 your concern to see if there was ever a lot  
20 sold up the hollow?
- 21 A I was told that there was a lot sold up the  
22 hollow by the gentlemen that decided not to  
23 come today. From what I understand, he  
24 bought a lot or is in the process of buying a

1 lot. I don't know.

2 Q Do you have any information other than the  
3 six tap fees that we are talking about are  
4 located down in around this lake close to  
5 Route 645?

6 A Say that again please, do I have any  
7 information that anybody has bought any land?

8 Q Do you have any information that the six tap  
9 fees that we are here on today are anything  
10 other than lots in and around this lake that  
11 are next to 645?

12 A I don't have any other knowledge, no, sir.

13 Q At present, Mr. Crum has not filed a plat in  
14 the Circuit Court office of subdivision fees  
15 and has not done anything to further develop  
16 this property, has he?

17 A Not that I'm aware of, but now I don't know,  
18 I don't typically go into the deed room to  
19 see what plats have been recorded.

20 Q If it was his testimony that none of the lots  
21 are staked out, that there has been no  
22 development, that it is just a big empty  
23 piece of wilderness out there that they may  
24 develop someday, you would have no

1 information to tell this judge otherwise?  
2 A Only the information that we had saw that Mr.  
3 Taylor had worked on through--and I can't  
4 recall the name of the engineering firm that  
5 had these lots divided up into 111 lots or  
6 114 lots or what have you.  
7 Q And that was--and they got some preliminary  
8 numbers, didn't they?  
9 A Yes, from what I understand.  
10 Q Do you have any information you can tell  
11 this judge whatsoever beyond those  
12 preliminary investigations of developing this  
13 subdivision?  
14 A Do I have any other information to tell this  
15 judge?  
16 Q Yes, sir, besides those preliminary things,  
17 they had a preliminary plat, they have got  
18 some preliminary estimates, do you have  
19 anything else in addition to that?  
20 A I don't have anything in addition to what our  
21 attorney has organized here.  
22 Q The lot sign that has been hanging on that  
23 telephone pole for a couple of years, I  
24 think?

1 A Could be, it has been there for a while, I've  
2 seen it a lot.

3 Q Are you allowed to adopt procedures such as  
4 has been introduced here without them having  
5 been submitted or approved by the Public  
6 Service Commission?

7 A Well, I think I stated that earlier that I  
8 have not done that, I will do that when I go  
9 home.

10 Q Is it your information now that those were  
11 supposed to have been submitted and approved  
12 before they were enforced?

13 A From what I just learned today, just now.

14 Q What would be the normal procedure in Martin  
15 County Water District in '98 if somebody came  
16 in and wanted a water tap?

17 A Well, in January of '98 there were some  
18 citizens that came by that had a hollow that  
19 wasn't served with water and the Board voted  
20 then that there was a majority of the folks  
21 up a hollow that wasn't served, if they would  
22 pay their tap fee, then we would give them  
23 water to a reasonable distance. I know that  
24 sounds like an open ended statement because

1 your opinion of a reasonable distance and my  
2 opinion of a reasonable distance would be  
3 difference. But we did adopt and formulate  
4 plans to when a group of folks that live up a  
5 hollow that currently doesn't have water,  
6 when they pay their tap fee of \$350, we would  
7 run the line up to them, like I say, at a  
8 reasonable distance.

9 Q How far did you run the line?

10 A Well, it would vary on the different hollows.

11 Q Well, on this particular one that you just  
12 told us about, how far did you run the line?

13 A Well, this particular hollow, I believe--well,  
14 there were several of these hollows, there were  
15 five hollows at the time and they were all various  
16 lengths. I couldn't tell you right now with any  
17 certainty what the exact distance was, some were  
18 1300 feet, some were less, some were 2300 feet.  
19 But there would be six or seven homes on those,  
20 those were existing people that wanted water.

21 Q Mr. Crum testified that it was his rule of  
22 thumb as Chairman of 200 foot per customer.

23 Are you familiar with anything like that?

24 A No, I'm not familiar with the 200 foot. I

1 believe that we have--we have had instances  
2 where somebody had a long service line and we  
3 would charge them what the cost of that was  
4 over and above 150 feet, I believe it is.  
5 Niles can clarify that, forgive me for not  
6 knowing for sure.

7 Q That would be over 150 feet per customer?

8 A I believe it is 150 feet per customer.

9 Q And would it be fair to say that some of these  
10 five hollows that you all did that you may have  
11 exceed that?

12 A I couldn't say if we exceeded that or not.

13 Q But some of them would have been over 1000  
14 feet?

15 A From the main line?

16 Q Yes, sir.

17 A Well, no, we constructed a main line up the  
18 hollow, you know, the main--at the mouth of  
19 the hollow, whether it was a 1000 feet or  
20 whatever, but we would actually lay line up a  
21 hollow that never had water before.

22 MR. MCGUIRE:

23 That's all.

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MR. ADAMS:

It's as broad as it is long, judge, they could have measured it.

HEARING OFFICER SHAPIRO:

Well, what was the question again?

MR. ADAMS:

If--

HEARING OFFICER SHAPIRO:

Don't answer the question, I'm telling him not to answer, go ahead, this is an objection. Go ahead, what is the question again?

MR. ADAMS:

Well, it is just--the question I had is if the--there is not pounds psi, which is required by the Commission's regulations, is there any other solution other than running a line from that Marcus Wells tank that you are aware of? So, that's the question of whether you have adequate pressure at the mouth?

HEARING OFFICER SHAPIRO:

Well, has there been any testimony that that is the reason they haven't served

1                   it?

2                   MR. ADAMS:

3                   Other than what he has testified to he  
4                   is concerned about the pressure.

5                   HEARING OFFICER SHAPIRO:

6                   Well, I'm not so sure I get that from  
7                   his testimony. I'm going to sustain the  
8                   objection. I don't think he--he says he  
9                   is not qualified to tell us what the  
10                  pressure is or what the solution to a  
11                  lack of pressure is are you?

12                  A     I'm not qualified to say, no.

13                  HEARING OFFICER SHAPIRO:

14                  I think he--all he can do is speculate.

15                  MR. ADAMS:

16                  That's all I have.

17                  HEARING OFFICER SHAPIRO:

18                  Is that it?

19                  MR. McGUIRE:

20                  Yes, sir.

21                  HEARING OFFICER SHAPIRO:

22                  Thank you.

23                  MR. WUETCHER:

24                  I believe we have just a couple more.



1 it will give for the extension instead of  
2 following a strict 50 foot rule it will  
3 pretty much deviate as the circumstances  
4 require?

5 A Well, the--in January of '98 when that was  
6 discussed about these different hollows of  
7 folks that wanted water, there wasn't a set  
8 amount of footage given. In other words,  
9 there wasn't up to X amount of feet, it was  
10 just if there was a majority of the homes.

11 Q Well, okay, let me--I'm not quite sure I  
12 understand you, let me try to rephrase the  
13 question. Is it the policy of the Water  
14 District to decide on a case by case basis  
15 how much of the cost of the water line  
16 extension that it will absorb? So, for  
17 example, if you had an instance where you had  
18 seven customers and had to make a water line  
19 extension of 1400 feet, you might absorb the  
20 entire cost or absorb a larger portion than,  
21 say, 50 feet per person?

22 A I think that is correct.

23 Q Okay. Has Martin County Water District  
24 applied to the Public Service Commission in

1           those instances where it has given more than  
2           50 foot per applicant for approval to deviate  
3           from the Commission Regulations in its own  
4           tariff?

5       A     Not that I'm aware of.

6       Q     I want to make sure I understand something  
7           here. Am I correct when I interpret your  
8           testimony as stating that the Water District  
9           would provide service to these four or six  
10          homes if it had assurances, number one, that  
11          there was adequate pressure to serve them--

12       A     Uh-huh.

13       Q     --and that there would be no additional  
14          development of the area unless it was done  
15          under its proposed water procedures, water  
16          development procedures?

17       A     Right, that's my understanding on it that  
18          there wouldn't be a problem to service that  
19          area from Route 3 if Route 3 can handle it  
20          for those homes only and not any of the rest  
21          of those homes--not any of the rest of that  
22          development because of the change in  
23          elevation and so forth.

24       Q     And, to your knowledge, has there been any

1 discussions between either the Water  
2 District--between the Water District and the  
3 complainants about service being provided  
4 under those conditions?

5 A Would you repeat that please?

6 Q Well, let me rephrase it. Has the Water District  
7 said to the complainants, we will provide you  
8 service provided you agree that there will be no  
9 further development in that area for subdivision,  
10 except water service will not be provided in the--  
11 under any other conditions except under the  
12 procedures that we have set up for water  
13 subdivision developments?

14 A No, I don't think that any dialogue like that  
15 has happened. But I would like to say this,  
16 when we were first notified that there was a  
17 complaint filed and I remembered talking to a  
18 gentleman--and I can't recall his last name--  
19 I think it is Geoghegan, John Geoghegan, does  
20 that ring a bell with you folks, in the  
21 Public Service Commission?

22 Q You spoke with someone from the--

23 A I spoke to him and another gentleman and I  
24 cannot recall his name at all, talked to the

1 second gentleman a couple of times, that they  
2 would call the office about what was going  
3 on. And the indication they gave to me was  
4 this has gone on to the Public Service  
5 Commission, you can't talk about this now.  
6 It is a formal matter. So, I took that at  
7 face value to say I can't talk to these folks  
8 any more about this.

9 MR. WUETCHER:

10 Okay, thank you.

11 HEARING OFFICER SHAPIRO:

12 Thank you. We will be in recess until 1:30.

13 MR. MCGUIRE:

14 Your Honor, I'd like to take under advisement a  
15 motion for summary judgement. We will agree with  
16 what he just said.

17 HEARING OFFICER SHAPIRO:

18 We'll recess until 1:30.

19 (OFF THE RECORD)

20 HEARING OFFICER SHAPIRO:

21 Mr. Adams, I don't know whether you have moved to  
22 introduce those last court exhibits or not. Do  
23 you wish to make them a part of the record?  
24

1 MR. ADAMS:

2 Yes, I do, not having the court reporter I had,  
3 but I would--if I have not done it for any reason  
4 I would move at this time the introduction of  
5 those.

6 COURT REPORTER:

7 They have been, I think.

8 MR. McGUIRE:

9 Those are the photographs?

10 HEARING OFFICER SHAPIRO:

11 The photographs.

12 MR. McGUIRE:

13 No objection.

14 HEARING OFFICER SHAPIRO:

15 All right. they will be made a part of the  
16 witness's testimony. Okay, Mr. McGuire, you want  
17 to call your next witness?

18 MR. McGUIRE:

19 I call Benton Crum.

20 (WITNESS DULY SWORN)

21 MR. McGUIRE:

22 Let me see, these checks, I think we agreed that  
23 they would be into evidence, Your Honor, do they  
24 need to be marked?

1 HEARING OFFICER SHAPIRO:

2 No, because I think the stipulation was that the  
3 checks that were filed as a part of the complaint  
4 would be also incorporated, I guess, by reference  
5 into the evidence of this proceeding.

6 MR. MCGUIRE:

7 I understand a copy of the checks are in evidence.

8 HEARING OFFICER SHAPIRO:

9 If that is not the agreement, that is the  
10 agreement, hasn't that been stated formally that  
11 is the stipulation of the parties; isn't that  
12 right?

13 MR. MCGUIRE:

14 That's correct, sir.

15

16 The witness, BENTON CRUM, having been duly sworn  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q Benton, would you tell the Judge your full name?

21 A Yes. Benton Crum, Benton Fletcher Crum.

22 Q And Benton, where do you live?

23 A I live at--in Inez, Kentucky, just outside of

24 Inez about a quarter--about a mile and a

1 half, I'd say.

2 Q And Benton, that exhibit we introduced as  
3 Exhibit 1 on our behalf, your behalf, is that  
4 a picture of your home?

5 A Yes, it is.

6 Q And you live there?

7 A Yes, I do.

8 Q You live there with who?

9 A My wife and son, ten year old son.

10 Q And did you tender a check for a water tap to  
11 the Martin County Water District?

12 A Yes, I did.

13 Q And by agreement a copy of that that was  
14 attached to the complaint has already been  
15 made a part of the evidence but I'll ask you  
16 to look and tell the court if, in fact, that  
17 is not the original of the check that you  
18 tendered?

19 A That is, yes.

20 Q And it stated on it that the purpose of it  
21 was for a water tap?

22 A Yes, it does.

23 Q And are you asking for water, that this judge  
24 order that you be allowed to have a water tap to

1           your residence?

2     A     Yes, I am.

3     Q     How long have you lived there without water,  
4           without city water?

5     A     It has been about eight months, eight and a  
6           half.

7     Q     You live there with your wife?

8     A     Yes, I do.

9     Q     And where are you employed?

10    A     The Martin County Board of Education.

11    Q     And where is she employed?

12    A     The Martin County Board of Education.

13    Q     You all are teachers?

14    A     Yes, sir.

15    Q     And do you have children?

16    A     Yes, we have one son.

17    Q     How old is your son?

18    A     He is ten.

19    Q     And the three of you live there?

20    A     Yes.

21    Q     And how long have you been trying to get  
22           water to your new home?

23    A     Well, probably, I guess, we have lived there  
24           seven and a half months or something like

1 that, eight months, and I know we--the house  
2 was built and it sat there for a month trying  
3 to get water. And finally we gave that up  
4 and just--and so we drilled a well.

5 Q And you all have been able to survive with a  
6 well?

7 A Well, yes, we've survived. We had to buy a  
8 \$1,300 water conditioner.

9 Q Did anybody from the water company ever give  
10 you any indication of anything that you could  
11 do that then you could get water?

12 A I talked to Craig, Craig and I are good  
13 friends, and we talked a couple of times  
14 before I moved in. And there was several  
15 different stories, you know, several  
16 different things, I just don't know if he was  
17 sure of what was going on or what, but at one  
18 time he said, you know, that they couldn't  
19 provide it to the whole thing. And I said  
20 well, we're not wanting it to the whole  
21 project, just the water tap at my house  
22 and so on. And he said at one point that he  
23 thought, you know, he could provide me with  
24 water, you know. And there was a time when

1 he said, another conversation he said if we--  
2 we would have to go all the way to Route 3.  
3 I thought that was kind of odd because I knew  
4 there were other people that didn't have to  
5 go that far to get the water. So, after the  
6 bore, you know, I thought we wouldn't have  
7 any problem--the bore under the road--I  
8 didn't think we would have any problem after  
9 that but it just didn't work out.

10 Q He never gave you any indication of anything  
11 you could do then after the bore under the  
12 road and the partial line was laid by you  
13 all, that you could--anything that you could  
14 comply with or any request or anything at all  
15 that you could do just to get the water tap?

16 A No, we never really had any conversations  
17 about the water after that. I just kind of  
18 let my dad handle it after that.

19 Q Now, this case is being brought by yourself  
20 and Derle Walker and John Crum, that's your  
21 father; is that correct?

22 A Yes.

23 Q But what you are asking this court for, this  
24 tribunal, is one for water tap; isn't it?

1 A Yes, I'd like to have water, city water.

2 Q Just for your house?

3 A Yes, that would be nice.

4 Q And that's all you are asking for?

5 A Well, it's what I'm asking for, yes.

6 MR. McGUIRE:

7 That's all.

8

9 CROSS EXAMINATION

10 BY MR. ADAMS:

11 Q Mr. Crum, I guess what--did your Dad just--or even  
12 develop or make a deed to you for your house?

13 A Yes, I guess that was the corporation that  
14 made the deed to me.

15 Q So, the--your house and lot are a part of the  
16 subdivision?

17 MR. McGUIRE:

18 Objection, that assumes that there is a  
19 subdivision, that there have been some  
20 preliminary develop on it. If he would  
21 reword his question.

22 HEARING OFFICER SHAPIRO:

23 Well, I think we all know he is talking  
24 about. I'll overrule the objection, go

1 ahead.

2 A Yes, that was part of the overall property that  
3 they had purchased.

4 Q All right. So, it is your understanding it  
5 is a part of the subdivision?

6 A As such.

7 Q And, obviously, they are still advertising  
8 for lots?

9 A The sign is still there.

10 Q Yes, sir. And I believe you and Craig were  
11 actually what, friends in high school?

12 A Yes.

13 Q And you are still good friends?

14 A Yes, we are.

15 Q And he would have no reason to want to do  
16 anything to harm you?

17 A No, I wouldn't imagine he would.

18 Q In fact, you are both still pretty good  
19 friends?

20 A Yes, we are.

21 Q And his concern was being able to furnish  
22 water to a subdivision?

23 A Say that again?

24 Q His concern was their inability to furnish

1 water to an entire subdivision from Route 3?

2 A I don't know, we never talked about like the  
3 first two times, which was eight months ago  
4 or something.

5 Q Well, I understand, the initial conversation  
6 he had was concerned about furnishing water  
7 to the subdivision?

8 A I hope he was.

9 Q I mean, he indicated that to you?

10 A I'm sure he--I'm sure he would have liked to  
11 have seen me had water.

12 Q Yes, but my question, Mr. Crum, during one of  
13 those early conversations he indicated he was  
14 concerned about the inability to furnish  
15 water to the entire subdivision?

16 A Yes.

17 Q Okay. And I believe--yes, John Crum, that  
18 was the gentleman that testified this  
19 morning?

20 A Yes.

21 Q And that is your father?

22 A Yes, it is.

23 Q And I think you told us that you went ahead  
24 and kind of--after you talked to Craig a

1 couple of times you then sort of turned it  
2 over to your dad?

3 A Yeah.

4 Q So, you never approached anyone at the Martin  
5 County Water Board about trying to resolve  
6 whatever difficulty there was?

7 A No, not after that, I did not.

8 Q Other than the conversations with Craig, were  
9 those just casual conversations when you ran  
10 into him or--

11 A Well, I called him, I called him at the  
12 office one day and we talked and it has been  
13 nine months, I can't remember exactly when it  
14 was but, yes, we--you know, I just called him  
15 to see what was going on.

16 Q And were you aware that your dad had been  
17 advised to attend a water board meeting?

18 A I probably was, I just don't remember for  
19 sure.

20 Q So, you had a couple of conversations, never  
21 approached anybody else about those con--  
22 afterward--after you had those conversations  
23 with Craig?

24 A No, I never approached anyone from the--I

1 think I might have mentioned it to one of the  
2 water commissioners once, Anita Collier.

3 MR. ADAMS:

4 That's it. I'm sorry, this gentleman  
5 may have questions.

6 MR. WUETCHER:

7 I have a couple.

8

9

CROSS EXAMINATION

10 BY MR. WUETCHER:

11 Q Good afternoon.

12 A Good afternoon.

13 Q In the complaint it states that \$25,000 was  
14 expended to prepare a road bore and to  
15 install the water lines within a few hundred  
16 feet of the State Route 3 line. Did you pay  
17 a portion of that amount?

18 A Not personally, no, the company, my dad and  
19 his partner paid for it.

20 Q Okay. So, there wasn't any bill issued to  
21 you for your portion of the fee?

22 A No.

23 MR. WUETCHER:

24 That's all we have, thank you.

1 MR. MCGUIRE:

2 Niles Cumbo.

3 (WITNESS DULY SWORN)

4

5 The witness, NILES L. CUMBO, having first been  
6 duly sworn, testified as follows:

7

DIRECT EXAMINATION

8 BY MR. MCGUIRE:

9 Q Mr. Cumbo, would you please tell us your full  
10 name?

11 A Niles L. Cumbo.

12 Q Where do you live Mr. Cumbo?

13 A I live in Inez, Kentucky.

14 Q Where are you employed?

15 A Martin County Water District.

16 Q How long have you been there?

17 A If I make the first day of December it will  
18 be 30 years.

19 Q And what is your position there?

20 A Superintendent.

21 Q How long have you been superintendent?

22 A Since I was employed with the Water District.

23 Q Now, the situation with the Secretary and her  
24 time card, you were there when that happened?

1 A Yes, I was.

2 Q And she was turning in time cards for more  
3 hours than she was actually there?

4 A She was accused.

5 Q I didn't ask you if she was a student, I  
6 asked if she was turning in more hours--

7 A I said she was accused of turning in more  
8 hours.

9 Q Oh, I'm sorry.

10 A I'm not saying that she turned in more hours,  
11 I said she was accused.

12 Q Well, was she?

13 A She was.

14 Q And who was--

15 HEARING OFFICER SHAPIRO:

16 She was what, accused of turning in more  
17 hours?

18 A She was accused of being on the time clock  
19 while being a student.

20 HEARING OFFICER SHAPIRO:

21 When she wasn't working? In other  
22 words, she was accused of turning in  
23 more hours than she was working?

24 A She worked more hours than what she was on

1 the clock.

2 HEARING OFFICER SHAPIRO:

3 So, you are not saying--so, when you say  
4 "she was," you are not saying she was  
5 working less hours than she was being  
6 paid for, you are saying she was accused  
7 of working less hours than she was being  
8 paid for.

9 A Yes.

10 HEARING OFFICER SHAPIRO:

11 Okay.

12 Q It is your testimony that she only clocked in when  
13 she was actually present and on the job?

14 A I did not say that, sir.

15 Q Okay. Why don't you explain it to me?

16 A She would take the work home and do it of  
17 evening and she would work at the water plant  
18 when she was off the clock. She was making  
19 up more than her time when she was accused of  
20 being on the clock.

21 Q Well, what did the--do you have a time card  
22 where everybody punches in?

23 A Uh-huh.

24 Q You nodded, I take that as a yes. You have to

1 answer for--

2 A Yes, we do have a time card.

3 Q Okay. What did the time cards reflect? Did  
4 you write on the time cards that she worked  
5 at home between certain hours or did it  
6 simply show that she punched in at one hour  
7 and punched out at another hour but she  
8 wasn't really there during that time?

9 A Well, it don't necessarily mean she wasn't  
10 there sir. The time card reflected that she  
11 punched in and she punched out. Now, she may  
12 have been in there or she may not have been,  
13 I can't say for sure.

14 Q So, there were times when she turned in time  
15 cards--

16 MR. ADAMS:

17 I object because I don't know that this  
18 is relevant. I think we have  
19 established that there may have been  
20 some conflict between Mr. John Crum and  
21 this employee, but I don't think it had  
22 anything to do with this, certainly not  
23 in this depth.

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HEARING OFFICER SHAPIRO:

Mr. McGuire, I'm having a little problem with it myself. I mean, it has been established that there was an accusation made and Mr. Cumbo agrees--everybody agrees that there was an accusation made and that as a result of that accusation Mr. Crum, when he was Chairman of the Commission, refused to sign her payroll slip, and apparently took it back to the Commission. What more can this witness add?

MR. MCGUIRE:

Let me move on to another subject, then, or finish it up, may be a better way.

Q During that period of time who approved the time cards?

A I did, sir.

Q And there was an investigation of that?

A Yes, there was.

Q And who was the investigation conducted by?

A Attorney General.

Q And because of that there has been some animosity between you and Mr. Crum?

- 1 A Some animosity, yes.
- 2 Q And there has been some hard feelings about that?
- 3 A Some hard feelings, yes.
- 4 Q Did you ever say to anyone that you wanted--that
- 5 Mr. Crum would never get water to this property?
- 6 A No, I did not.
- 7 Q Are you sure?
- 8 A I am positive I did not say it in that
- 9 manner.
- 10 Q Okay. Did you say it in another manner?
- 11 A I said that "I" would not run water to the
- 12 property. I am not the water plant, but I
- 13 personally will not run the water to the
- 14 water company, to the plant--to the property
- 15 rather.
- 16 Q What did you mean by that?
- 17 A If the water company wants to run the lines, then
- 18 they could contract it out to let someone else run
- 19 it, I won't have nothing to do with it.
- 20 Q Even though you are employed by the water
- 21 company, if they were going to run the water
- 22 you wouldn't do it even if they agreed to do
- 23 it?
- 24 A I would not, because if I got on the property

- 1 I'd probably be accused of doing something.
- 2 Q So, there is pretty hard feelings between you  
3 and Mr. Crum?
- 4 A They were, I don't say that they are now, I'd  
5 say they were.
- 6 Q In the past have you all supplied water to  
7 residents that were 150 and 200 feet away  
8 from the main line?
- 9 A Yes, we have.
- 10 Q Have you supplied water to residents without  
11 charge that would have exceeded 200 feet?
- 12 A Probably, on certain circumstances it would  
13 probably exceed a little bit or something  
14 like that.
- 15 Q So, in other words, it has always been by  
16 case by case basis?
- 17 A Mostly.
- 18 Q And do you know what the pressure is on this  
19 water line that comes through Route 3?
- 20 A The particular point we are talking about it  
21 is about 100 psi.
- 22 Q And when did you check it?
- 23 A We made a water tap yesterday, about 1000  
24 feet down stream from it and it shows 105

1 psi.

2 Q And where did you make the test?

3 A That's where I made a water tap,  
4 approximately 1000 foot down stream from the  
5 point in question.

6 Q And have you ever checked the water pressure at  
7 Ms. Priest's house that is at approximately an  
8 elevation somewhat greater than Benton Crum's  
9 property?

10 A Mr. Priest has a private pump on his system  
11 to boost the pressure up to his house.

12 Q Do you know what the pressure is at his pump  
13 or before his pump?

14 A Above 30 pounds of pressure, between 30 and  
15 40.

16 Q Okay. And do you know that's directly below  
17 Mr. Priest is--is it Mr. Cook, Bobby--Bobby  
18 Hall?

19 A Okay.

20 Q Is that correct?

21 A Yes.

22 Q Do you know what the pressure is at his house?

23 A Approximately 50 pounds.

24 Q And do you know what the elevation is at his

1 house?

2 A No, I do not, sir.

3 Q Do you know any water--any reason that water  
4 cannot be supplied to these six residential  
5 taps?

6 A There is no reason why the water cannot be  
7 supplied, the only thing that I have a  
8 problem with is I didn't realize that they  
9 had separated six water taps from Eden West  
10 Development. And I cannot say that the water  
11 company can put parts of Eden West  
12 Development on a three inch water line.

13 Q I understand, but I'm only asking concerning  
14 these six water taps.

15 A I can get water to those six water taps, I  
16 assume.

17 Q You know of no reason that you--there is no  
18 apparent reason you wouldn't be able to  
19 supply those six taps?

20 A If there is a water line brought to the main  
21 road and a water tap is made I don't see no  
22 reason why you can't get water to those taps.

23 Q Have you--

24 A I'm not--however, I do not know where those

1 six taps are at, so I cannot say for certain  
2 that we can put water to those taps.

3 Q Have you ever measured the distance between  
4 where Mr. Crum ran the line on the west side  
5 of Route 3 to your main water line?

6 A Just estimated the distance.

7 Q What did you estimate the distance?

8 A Approximately between 400 and 500 feet.

9 Q And is that from the road as Mr. Wright (sic)  
10 testified or is that from the end of the line  
11 which comes to the creek?

12 A I do not know where the end of the line is, sir,  
13 because I haven't never been there and I haven't  
14 never seen it.

15 Q Okay. So, you are estimating it from 645?

16 A Right.

17 Q And you don't know how far beyond 645 Mr.  
18 Crum's line runs?

19 A No, I do not.

20 MR. MCGUIRE:

21 That's all.  
22  
23  
2

1 CROSS EXAMINATION

2 BY MR. ADAMS:

3 Q Mr. Cumbo--

4 A yes, sir.

5 Q --what--one of the concerns you had was that  
6 this is six lots but you have other concerns  
7 about that line?

8 A Well, first off, I have never seen that line  
9 if it exists. We have never been--nobody  
10 from the water company has ever looked at it,  
11 we had no opportunity to inspect it, has the  
12 line been pressure tested, disinfected,  
13 installed correctly, I don't know I haven't--  
14 like I say, I have never seen or heard tell  
15 of this line.

16 Q Now, once--those six houses aside, would  
17 there be adequate pressure to service the  
18 whole Eden West Subdivision?

19 A No, sir. A three inch water line will not  
20 serve but very few houses in that area. And  
21 I don't know how you are going to separate  
22 six houses from Eden West.

23 Q Can you explain that?

24 A Well, if the water company agrees to go ahead

1 and make a water tap for six houses, which we  
2 accept the line, if John Doe or Jane Doe buys  
3 a piece of property in that line how do we  
4 refuse to make another water tap? And then  
5 if you make the one then you are going to  
6 have to make another one. And it is just a  
7 snowball affect, you are going to be to the  
8 point where that small line will not furnish  
9 water and the water company will be obligated  
10 to backup and run a large line in the area to  
11 serve the entire housing problem.

12 Q As the development of Eden West continued,  
13 would it reach a point where it couldn't be  
14 serviced from Route 3 at all?

15 A Yes, sir.

16 Q Would you explain that some more?

17 A A lot of Eden West, according to that map  
18 right there, is of high elevation. About  
19 three line is fed off the storage tank that  
20 is 830 feet to the base, and in order to  
21 serve an area above 750 foot elevation would  
22 be--you would be required to install a pump  
23 or something.

24 Q In your opinion, what would be the proper way

1 to service that?

2 A The proper way right now to service the area  
3 and solve the problem is for the people in  
4 question, like Mr. Crum, bringing the three  
5 inch line to Route 3, we will make a tap onto  
6 the six inch water line and the tap fee is  
7 paid, we will set a master meter at that  
8 point. And from that point on then they can  
9 do what they want, they can set five houses,  
10 10 houses, 15 houses.

11 Q And not take over the line?

12 A Right. The line is his from that meter on it  
13 is his line.

14 Q Now, in terms of the whole subdivision what  
15 tank--would the Marcus Wells tank be the  
16 correct way to go?

17 A I believe it would be about the only way to  
18 go if you develop the entire subdivision.

19 Q Why is that?

20 A Part of it would be such high elevations that  
21 you could not furnish water from Route 3.

22 Q So, in summary, your concern is if you run a  
23 line over there the system takes over the  
24 line and then additional development and you

1 cannot give them--you are concerned about  
2 those supply additional development?

3 A Well, I've been in the position before where  
4 we have run too small water lines. And the  
5 point comes to the point where you cannot  
6 furnish water then you have to back up and  
7 run a larger water line. And in the case  
8 like that right there, that's what the water  
9 company would be they would end up, if they  
10 accept that line, start making taps on it,  
11 very shortly the water company would be  
12 required to go in there and run a line large  
13 enough from the storage tank and high enough  
14 to furnish all that entire subdivision.

15 Q And that would have to be from the Marcus  
16 Wells tank?

17 A It would have to be from the Marcus Wells tank.

18 Q And that would cost about two hundred and  
19 some thousand dollars?

20 A That's correct.

21 Q Now, there is some talk about Bobby Hall, was  
22 that due to highway relocation?

23 A Yes, it was. Bobby Hall was on water prior  
24 to the highway coming through so they just

1 located his water line into a new casing and  
2 put it back into operation.

3 Q There has been a lot of discussion here today  
4 about the problem with an employee. As far  
5 as you know, she was--it was investigated and  
6 she was exonerated of any wrong doings?

7 A Right.

8 Q And you indicated that you would not run the  
9 line, are you afraid of an incident with Mr.  
10 Crum?

11 A With the incident with Mr. Crum and I go in  
12 there and run the line and I do something  
13 wrong or something happens on that property,  
14 most likely I would get the blame for it.  
15 And it may be end up in court over that  
16 thing, so the best situation from where I set  
17 is for me not to tip the line period, or  
18 anything else, just let a contractor go do it  
19 and I'll not have anything to do with it.

20 Q And that would suit you fine?

21 A That would suit me fine, that's right.

22 MR. ADAMS:

23 That's all I have.

24

1 MR. WUETCHER:

2 Just a couple.

3

4

CROSS EXAMINATION

5 BY MR. WUETCHER:

6 Q The area in question here, was it part of what  
7 used to be Martin County Water District Number 1?

8 A Yes.

9 Q Has Martin County Number 1 merged with Martin  
10 County Water District Number 2; is that  
11 correct?

12 A Yes, sir.

13 Q Has the merged district ever filed a revised  
14 tariff with the Public Service Commission?

15 A Not to my knowledge, sir. The--even though  
16 they merged as one water district there is  
17 two different sections of the water.

18 Q Just so--I'm sorry, go ahead.

19 A Water District Number 1 became Section B,  
20 Water District Number 2 is Section A, and  
21 these things are listed that way for the  
22 purpose of bonding. Each one of them has a  
23 different set of bondings and different pay  
24 backs and there is a different pay scale, you

1 know, like base rate on one or Section A and  
2 Section B.

3 Q Do both sections follow the same water main  
4 extension rules or do they have different  
5 extension rules?

6 A I think they are basically the same, sir.

7 Q Okay. There is, I think, some discussion  
8 during the cross-examination of Mr. Justice  
9 about the Water District deciding on a case  
10 by case basis how much of the cost of an  
11 extension that the District would pay. I  
12 take it you would agree with his  
13 characterization that the District determines  
14 the amount of the extension that it is going  
15 to pay on a case by case basis?

16 A Pretty well, that is the situation. Some of  
17 them that we do, such as Mr. Justice  
18 mentioned, that the board itself decides if  
19 we are going to run a line in certain area  
20 for specific needs or something like that.  
21 But, normally, we try to stick with the--  
22 pretty well with the same rules for  
23 everybody.

24 Q Okay. Well, what what that rule be?

1 A Well, normally, the rule is if a group of  
2 people in an area were going to have a line  
3 extension done, normally, in the past the  
4 water company would say approximately 1,500  
5 foot of line they would run--have to have at  
6 least five to six water taps. It depends  
7 upon the terrain you are working in.

8 Q Okay. Recognizing there might be some differences  
9 because of the terrain, you are saying that for  
10 the District would usually provide at no cost to  
11 the applicant between 200 and 300 feet of main?

12 A Yes, sir.

13 Q Do you know of any provision in either  
14 Section A or Section B's tariff that  
15 specifically sets forth that rule?

16 A Not really. It is more or less a rule, I  
17 guess, that we just kind of developed over  
18 the years how we are going to operate really.

19 Q One--I may have missed something in your  
20 testimony. At one point you mentioned that  
21 the most appropriate way of handling the  
22 situation would be for the complainants to  
23 complete the extension and then maintain  
24 control of the line but the District would

1 put a master meter up, I guess that would be  
2 near to where the six inch main on State  
3 Route 3 is?

4 A Yes, sir.

5 MR. WUETCHER:

6 That's all we have, thank you.

7 HEARING OFFICER SHAPIRO:

8 Any redirect?

9 MR. McGUIRE:

10 Yes, sir.

11

12 REDIRECT EXAMINATION

13 BY MR. McGUIRE:

14 Q You didn't put up some sort of meter like that on  
15 Bobby Hall, did you?

16 A No, what I was getting at is a simple way to  
17 solve the problem and Mr. Crum and whatsoever  
18 could go ahead and sell lots and have water  
19 for everybody over there for as long as they  
20 could furnish water.

21 Q In other words, you would set them up as  
22 their own little water company?

23 A Sure, it would be fine. All I could do is  
24 rent them a master meter and bill one company

1 for the water and then what they do with it  
2 that would be theirs.

3 Q Is there any place else where there is  
4 residence and different people live are all  
5 off one meter and they divide it up that way?

6 A I don't have any right now that I know of.  
7 It's a suggestion as to ways to solve a  
8 problem.

9 Q Other people who have asked to connect to the  
10 water and pay their individual tap fee, and  
11 offered to run the line all the way over to  
12 your line and then give you the line, did you  
13 all accept the line and put the meter at  
14 their house?

15 A Sometimes the meter doesn't go to the house, but  
16 most of the time it goes on the property.

17 Q On the individual's property that pays the  
18 tap fee?

19 A Unless there is an exception where the  
20 property is set at a high elevation that the  
21 water company cannot maintain 30 psi, then  
22 there is arrangements made to set the meter  
23 someplace else.

24 Q And like Mr. Priest, he put in his own pump

1 to increase the pressure up to his house,  
2 didn't he?

3 A Yes, sir.

4 Q And I guess somebody on this--that wanted to  
5 live over here, if they wanted to put in a  
6 pump to increase their pressure, they could,  
7 couldn't they?

8 A Yes, they could.

9 Q And is there any reason they shouldn't have a  
10 right to do that just like Mr. Priest?

11 A First off, you have got to be able to put the  
12 meter, have a place to put the meter. The  
13 meter--the only place the pump goes on is on  
14 the outlet side of the meter and they pump  
15 from that point. So, if you have got  
16 somebody at a real high elevation that wants  
17 to pump to that point, then they have to make  
18 arrangements to set the meter at a low  
19 elevation.

20 Q As long as they put their elevation, their  
21 meter at an elevation where they have got 30  
22 pounds per square inch they can hook it up  
23 and they can put a pump and they could go all  
24 the way to Timbuktu if they wanted to,

1           couldn't they?

2    A    As far as they can pump if they want to pump  
3           it.

4                   MR. MCGUIRE:

5                    Okay, that's all.

6

7

RECROSS EXAMINATION

8    BY MR. ADAMS:

9    Q    Mr. Cumbo,--

10   A    Yes, sir.

11   Q    --that would be something that the individual  
12           would have to do rather than the water  
13           company?

14   A    Yes, sir, the individual has to do it.

15   Q    It is not feasible for the--

16   A    That's the reason I say it has to be past the  
17           meter, it pump has to be on the outlet side  
18           of that meter, the individual has to maintain  
19           that.

20   Q    That is not something feasible for the Water  
21           District?

22   A    No, it is not, sir.

23   Q    And the reason you would want to control  
24           though, continue to maintain the lines

1           themselves, is so we are not down here in the  
2           future?

3       A     Right, we are not here with another problem  
4           six months from now similar to what we've got  
5           now.

6       Q     Okay. And you were asked about doing that master  
7           meter and other circumstances. Is this the only  
8           subdivision you have ever dealt with where they  
9           didn't go ahead and comply with the procedures?

10      A     All--so far up to this point all people who are  
11           developing subdivisions has complied without any  
12           problem. They stick them in there and say what do  
13           you want, we say this is what we want, they bring  
14           back the prints, and we either approve or  
15           disapprove and we go from that point.

16      Q     That wasn't done in this case?

17      A     Well, so far we haven't never seen a plat or  
18           plan or anything on this subdivision. We  
19           don't know what is going on.

20                   MR. ADAMS:

21                           Thank you.

22

23

24



1 HEARING OFFICER SHAPIRO:

2 Is that the case for the complainant?

3 MR. MCGUIRE:

4 Let me call Mr. Walker.

5 (WITNESS DULY SWORN)

6

7 The witness, DERLE WALKER, having first been  
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCGUIRE:

11 Q Mr. Walker, would you please tell the judge your  
12 full name?

13 A Derle Walker.

14 Q And you are one of them who filed a complaint  
15 in this action?

16 A Yes, sir.

17 Q And how many water taps--

18 COURT REPORTER:

19 Spell your name?

20 A D-e-r-l-e.

21 Q And how many water taps are you asking for?

22 A Three or four, I believe.

23 Q Four for yourself. And would you go to the  
24 map and point out the location of the four

1           lots that you are wishing to service?

2    A       I can't read the map.

3    Q       I'll help you get oriented. This is--

4    A       Okay. I have a house right now right about  
5           here.

6    Q       He is pointing to the west side of Highway  
7           645.

8    A       This lake or pond or whatever runs through it  
9           at the end of the subdivision, okay, the  
10          layout or whatever you want to call it. I  
11          have a house right on the left side of the  
12          road almost at the end of the pond there, and  
13          there is lots back down this side of where  
14          the house is located.

15   Q       Okay.

16   A       And I'm sure that Craig and Niles both knows  
17          where it is.

18   Q       And did you pay tap fees for these properties  
19          back in 1998?

20   A       Yes, sir.

21   Q       Now, you have heard the testimony here of  
22          Niles Cumbo and others, do you know of any  
23          housing subdivisions in Martin County that  
24          have applied with these regulations that they

1 are talking about?

2 MR. ADAMS:

3 I'm going to object because I don't  
4 think the foundation is laid and how he  
5 would know.

6 HEARING OFFICER SHAPIRO:

7 Could we have the question again?

8 MR. McGUIRE:

9 I asked him if he knows of any housing  
10 subdivisions that have complied with  
11 these regulations.

12 HEARING OFFICER SHAPIRO:

13 I think you need to probably rephrase  
14 the question. I don't know how he would  
15 be able--how would he be in a position  
16 to answer that question.

17 A I've put two or three myself.

18 MR. McGUIRE:

19 It's a very small community, either he  
20 knows, if he doesn't know he will say he  
21 doesn't know, but if he knows some then  
22 he can tell us about them. We could  
23 drive around the whole town in five  
24 minutes.

1 HEARING OFFICER SHAPIRO:

2 Well, if you know your way I assume.

3 But--well, he can say whether he knows  
4 or he doesn't know, but before he  
5 explains it any further I'd like to have  
6 a little more information on the basis  
7 for his knowledge.

8 Q Do you know of any?

9 A I don't know of any recently.

10 Q And, certainly, you are involved in  
11 development and property around Inez and  
12 Martin County?

13 A Yes, sir.

14 Q That's a fairly small place?

15 A Yes, sir.

16 Q Did you hear the testi--you were in the room and  
17 heard the testimony about others that they alleged  
18 that had complied?

19 A Yes, sir.

20 Q Do you know where they are located?

21 A No, sir.

22 Q So, you don't believe anybody has ever come  
23 close to having run \$211,000 water line?

24

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HEARING OFFICER SHAPIRO:

He didn't say that now. If that is what he said then I'm going to have it stricken. What he said, as I understood it, was he didn't know whether or not anybody had complied or not complied. He is not saying he didn't know--he didn't say they hadn't complied, he didn't know whether they had complied.

MR. MCGUIRE:

Let me withdraw the question.

A Can I say something, sir?

HEARING OFFICER SHAPIRO:

No, no, you have to be responsive to the questions.

Q Did you participate in having this line put over to Route 3 from you all's property?

A I was--I participated in the drill under the road. Now the extension of the line doesn't go to Route 3, it goes part of the way to Route 3.

Q Does it go as far as the creek before you get to Route 3?

A Pretty well.

1 Q And where the line ends is that less than 200  
2 feet from Route 3?

3 A I'm just like the other people that  
4 testified, I don't know.

5 Q Have you ever been told anything by the Martin  
6 County Water District why you can't get water?

7 A I've only talked to one person, I talked to  
8 Niles.

9 Q And what did he say?

10 A Basically, he told me what he told you today.

11 Q What did he tell you?

12 A Well, he said that he and I had been friends for  
13 30 years and he wouldn't do anything to hurt me,  
14 but he wouldn't do a damn thing for John Crum.  
15 And that's pretty well his words.

16 Q And that is the only thing he said when you  
17 asked why you couldn't get water?

18 A Yes, sir.

19 MR. McGUIRE:

20 That's all.

21

22

CROSS EXAMINATION

23 BY MR. ADAMS:

24 Q Mr. Walker, did you ever go at any time to any

1 meeting of the Water District to voice your  
2 concern over that?

3 A No, sir.

4 Q Is there any reason why you didn't?

5 A Well, yes, probably. Martin County is more  
6 of a unique situation than Frankfort or  
7 Lexington. And pretty well, as I said, I  
8 have two or three subdivisions that--small  
9 subdivisions that we have put in, and I've  
10 never gone to the public--I mean, to their  
11 water commission, in fact, I served on it for  
12 several years. And you don't come in to the  
13 Public Service Commission or to the water  
14 commission and say, well, I need this, this  
15 and this. It is a working relationship  
16 between the--or always has been--between the  
17 water commission. I didn't go to the power  
18 company and say I need electricity up here  
19 but we have it.

20 Q Yes, but my question was you understand Mr. Cumbo  
21 is nothing but an employee?

22 A Yes, sir, I worked with him when he was first  
23 hired.

24 Q All right. You have a very high opinion of

1 him?

2 A Yes, I do.

3 Q And as far as you know he has a high opinion  
4 of you?

5 A Probably not.

6 Q You all have been friends for 30 years?

7 A Yes.

8 Q But you never went to, at any time, to the water  
9 board or members of the water board to say I need  
10 some water here?

11 A Did I officially go before the Martin County  
12 Water District, no.

13 Q Yes, or contact the members individually?

14 A No.

15 Q And I believe you are one of the owners of  
16 Eden West or the subdivision, corporation or  
17 whatever the name of that is?

18 A Yes.

19 Q And you and Mr. Crum are developing that  
20 property to sell lots?

21 A We were, yes, sir.

22 Q And, as a matter of fact, you are in the  
23 market today to sell lots?

24 A Yes, sir.

1 Q And you would--you are aware the only way to  
2 service that entire subdivision would be  
3 through the Marcus Wells tank?

4 A No, sir, I am not.

5 Q You would agree that with elevations they  
6 could not service that whole subdivision from  
7 Route 3?

8 A No one--I just got through saying I hadn't  
9 been to the water commission, and don't put  
10 words in my mouth, all right. We only asked  
11 for taps on the lower elevation, okay. Mr.  
12 Crum asked for, we were only--we don't have  
13 the money that probably people like you have.  
14 A quarter of a million dollars is a lot of  
15 money to me, all right. We were trying to  
16 work out something down here so we could  
17 reinvest it in this, right. And instead of  
18 the water commission working with us, due to  
19 the problem at the water commission, they are  
20 working against us.

21 Q Well, you never went to the water commission,  
22 did you?

23 A They were well aware of it, sir, and you knew  
24 it.

1 Q No, sir.

2 A Yes, you do.

3 MR. ADAMS:

4 Your Honor, I object, I think the  
5 witness should be instructed not to--

6 HEARING OFFICER SHAPIRO:

7 Well, let's try to keep our tempers  
8 under control. You are just a witness  
9 here and you are just here to question  
10 the witness. Just be responsive to his  
11 questions just like in any cross.

12 Q So, the answer is you did not go to any of  
13 those members to try to work this out?

14 A That's what I said.

15 Q Okay. And is there any reason why you just  
16 didn't run the water line on to Route 3?

17 A No.

18 Q Did you ever approach any--well, I think you  
19 answered that.

20 MR. ADAMS:

21 I think that's all I have for this  
22 witness.

23 HEARING OFFICER SHAPIRO:

24 Mr. Wuetcher?

1 MR. WUETCHER:

2 A few questions.

3

4

CROSS EXAMINATION

5 BY MR. WUETCHER:

6 Q Good afternoon Mr. Walker.

7 A How are you?

8 Q I'm doing okay. Let me start out by asking  
9 the land that has been labeled as the Eden  
10 West Subdivision, is that owned by the Eden  
11 West LLC?

12 A Yes, sir.

13 Q And I take it that you and John F. Crum are  
14 the sole shareholders, principles in that  
15 company?

16 A Yes, yes, sir. Pro--

17 Q I'm sorry, go ahead.

18 A Probably back, I don't know when its been--I  
19 don't whether you have any records on it, but  
20 this property, and I sat back there and  
21 listened to the opposite side, and we were--

22 HEARING OFFICER SHAPIRO:

23 Well, wait a minute. Why don't you just  
24 confine your testimony to the questions

1                   that you are being asked. I don't want  
2                   you to go off in some field.

3       A       I wasn't.

4                   HEARING OFFICER SHAPIRO:

5                   That is not being responsive. I think  
6                   the question was--

7                   MR. WUETCHER:

8                   It's been answered.

9                   HEARING OFFICER SHAPIRO:

10                  The question has been answered, let's  
11                  move on to something else.

12       Q       The--it's your and Mr. Crum's intention to  
13                  ultimately, if everything falls into place,  
14                  to develop that area as a subdivision; is  
15                  that correct?

16       A       Somewhere down the road, that is what I was  
17                  saying, sir. This was developed, the lay  
18                  out, the plans were drawn on this ten years  
19                  ago. We bought it from Addington and they  
20                  had, or someone before them had proposed a  
21                  development in there. So, this layout or  
22                  this development that has been being  
23                  discussed has been in limbo or in progress  
24                  for eight or ten years.

1 Q Okay. The--do you have any time frame right  
2 now as to when a subdivision plat would be  
3 filed with the County Clerk's Office?

4 A No, sir. What we are trying to do is get  
5 enough money ahead to--without water you  
6 can't sell lots, okay. And if we could sell  
7 the lots we can put more back into it and  
8 develop it further. We are trying to do  
9 possibly a working development. I mean,  
10 that's--

11 Q You say you are trying to do a working  
12 development, is it that you will develop a  
13 few lots at a time and then add on additional  
14 lots as you get the income from the sale of  
15 the first lots?

16 A We don't have the money to develop a 100 and  
17 whatever lots it is. I mean, this is the  
18 reason that we have done a preliminary, you  
19 know, to try to--we are trying to work--we  
20 agree that the water line would come off of  
21 the Wells Hill down would be the ideal  
22 situation if you had the money to do it with.  
23 And it should tie into Route 3 there through  
24 this property and it would make a circle

1 around for it, and it would be real good.

2 Q Okay. The--you have paid for four tap fees  
3 and I assume that's for four lots that you  
4 own?

5 A Uh-huh.

6 Q And I take it those lots are not for your own  
7 personal residence, is that correct?

8 A None of them are.

9 Q Okay. They are to be used to develop for  
10 possible sales to the public?

11 A Yes, sir.

12 Q Let me move on. The line that was constructed to  
13 connect with the Water District's line on State  
14 Route 3, do you know if the plans for that line  
15 were submitted or reviewed by the Division of  
16 Water?

17 A No, sir, I don't, I don't think so, I'm not  
18 at all positive.

19 Q Okay. But the plans that--were the plans for  
20 the line that was constructed to connect to  
21 the Water District's line were they prepared  
22 by professional engineers?

23 A No.

24

1 MR. WUETCHER:

2 That's all we have. Thank you, sir.

3 HEARING OFFICER SHAPIRO:

4 Mr. Walker, as I understand your testimony it is  
5 your plan, and I guess Mr. John Crum's plan, you  
6 and he are owners of this property, Eden West  
7 Subdivision?

8 A Yes, sir.

9 HEARING OFFICER SHAPIRO:

10 Is that right?

11 A Yes, sir.

12 HEARING OFFICER SHAPIRO:

13 Is it owned by a corporation or is it owned  
14 individually by the two of you?

15 A No, it's LLC.

16 HEARING OFFICER SHAPIRO:

17 LLC. And you said in your testimony that it  
18 consists of approximately 100 lots?

19 A That's basically a preliminary. I believe if  
20 I'm not mistaken probably 110, maybe or 105  
21 or 110. Some of them in developing it you  
22 would probably lose some, of course, you  
23 might be able to gain some.

24

1 HEARING OFFICER SHAPIRO:

2 So, the preliminary plan though shows around 111  
3 or--about 111 lots?

4 A 100 lots.

5 HEARING OFFICER SHAPIRO:

6 Are the six lots that--for which--or the six  
7 pieces of property for which the applic--or the  
8 request for water was made in the subdivision  
9 itself, are they part of the 106 lots, or 111  
10 lots?

11 A Yes, sir, they are in the lower elevation.

12 HEARING OFFICER SHAPIRO:

13 They would be part of the 111 lots then?

14 A Yes, sir.

15 HEARING OFFICER SHAPIRO:

16 Okay. you don't need to look at that, I think you  
17 can answer these questions without referring to  
18 the plat. So, what we are talking about then is  
19 111 lots in the subdivision, six of which have  
20 requested water service; is that right?

21 A Pretty well.

22 HEARING OFFICER SHAPIRO:

23 Do you own the three lots or is that--that you  
24 have requested service for yourself, or are those

1 owned by the corporation?

2 A The one that--there is a house on one of  
3 them, okay. I own it individually, I bought  
4 it from the corporation with options on the  
5 others, on the left of the road going in.

6 HEARING OFFICER SHAPIRO:

7 So, you have--you own one and have options on two  
8 others?

9 A Right.

10 HEARING OFFICER SHAPIRO:

11 The corporation then owns the other two?

12 A The corporation owns the others, yes, sir.

13 HEARING OFFICER SHAPIRO:

14 And if you were to get water then you are going to  
15 buy them?

16 A No, what I'm trying to do--if I can get water  
17 I'd sell that house and build another one.

18 HEARING OFFICER SHAPIRO:

19 You would buy the property, you would eventually--  
20 you would buy the property--

21 A Yes, sir.

22 HEARING OFFICER SHAPIRO:

23 --from the corporation if there was water to it;  
24 is that what you are saying?

1 A Yes, sir.

2 HEARING OFFICER SHAPIRO:

3 And one of the lots is owned, I take it, by Mr.  
4 Mark Bowden who was originally a party to this  
5 proceeding?

6 A Yes, sir.

7 HEARING OFFICER SHAPIRO:

8 But is not here today?

9 A Yes, sir.

10 HEARING OFFICER SHAPIRO:

11 And he owns his piece of property; is that right?

12 A Yes, sir.

13 HEARING OFFICER SHAPIRO:

14 And Mr. Benton Crum owns one lot?

15 A Yes, sir, he owns to the right across the dam  
16 as you go in.

17 HEARING OFFICER SHAPIRO:

18 He owns--so that is four lots, who owns--I mean,  
19 that's five, who owns the sixth lot?

20 A I think John paid for it, Mr. Crum.

21 HEARING OFFICER SHAPIRO:

22 So, John Crum owns one lot, you own one lot and  
23 have an option on two lots, Mr. Benton Crum owns  
24 one lot and Mr. Mark Bowden owns one lot; correct?

1 A Right, I think.

2 HEARING OFFICER SHAPIRO:

3 Now, when you purchased your lot you received a  
4 deed for it, I presume?

5 A Yes, sir.

6 HEARING OFFICER SHAPIRO:

7 How did the deed describe your property; do you  
8 remember?

9 A A lot from such and such point with so many  
10 feet.

11 HEARING OFFICER SHAPIRO:

12 So, it was just a meets and bounds description?

13 A Right.

14 HEARING OFFICER SHAPIRO:

15 It wasn't--it didn't refer to any other document  
16 such as a plat?

17 A It states--maybe, I'm not--I wouldn't swear to it.  
18 It is such and such--

19 HEARING OFFICER SHAPIRO:

20 You don't have a plat recorded do you for the  
21 subdivision?

22 A No.

23 HEARING OFFICER SHAPIRO:

24 Okay. Now, you said that it is your plan to sell

1 the lots or lots on the lower elevation--

2 A Yes, sir.

3 HEARING OFFICER SHAPIRO:

4 --in order to get money to be able to run a line  
5 from the what's the name of that?

6 A Marcus Wells property.

7 HEARING OFFICER SHAPIRO:

8 Marcus Wells property to the upper elevation I  
9 assume; is that right?

10 A Yes, sir, there is about--

11 HEARING OFFICER SHAPIRO:

12 How many lots do you plan or do you think you  
13 would need to sell before you would be able to run  
14 that line? Have you discussed that?

15 A No.

16 HEARING OFFICER SHAPIRO:

17 Do you have any idea how many lots you are talking  
18 about?

19 A We are well aware that we don't have the  
20 pressure, or we didn't think that there was  
21 pressure, to supply anything but the lower  
22 elevation.

23 HEARING OFFICER SHAPIRO:

24 I understand that, but what I want to know is how

1           many lots do you think you are going to have to  
2           sell in the subdivision at the lower elevations  
3           before you are able to run a line from Marcus  
4           Wells?

5       A     We only have six that we are trying to get  
6           water on now.

7       HEARING OFFICER SHAPIRO:

8           I know that.

9       A     We want to--

10       HEARING OFFICER SHAPIRO:

11           Wait a minute. Your plan, though, is to sell as  
12           many lots as you can because you need to; isn't  
13           that right?

14       A     Yes.

15       HEARING OFFICER SHAPIRO:

16           To finance the construction of the other line, is  
17           that what you were talking about?

18       A     Yes, sir.

19       HEARING OFFICER SHAPIRO:

20           And how many lots do you think you are going to  
21           have to sell before you can finance the  
22           construction of the other line?

23       A     About 17.

24

1 HEARING OFFICER SHAPIRO:

2 Seventeen lots?

3 A Yes, sir.

4 HEARING OFFICER SHAPIRO:

5 So, those lots would be--would also, I assume, be  
6 furnished with water from the line that you have  
7 run to Highway 3?

8 A We would have to do that or we would have to  
9 come up with our own money out of our--extra  
10 money to put the line in, put money out of  
11 our pockets and to put the line in.

12 HEARING OFFICER SHAPIRO:

13 So, even though you are only asking for six lots  
14 at this time, you are really asking for--you are  
15 planning on selling 11 more lots, at least 11 more  
16 lots, which would have to receive service from  
17 this same line for you to go to an alternate  
18 source of water?

19 A If we sell the lots before we put the Wells  
20 line in we would have to, yes, sir.

21 HEARING OFFICER SHAPIRO:

22 But you can't put the Wells line in until you sell  
23 17 lots?

24 A I didn't say that. I said if we could sell

1 the lots it would help us put the line in.  
2 If we can only get water for six lots, we are  
3 going to have to do something else on it.

4 HEARING OFFICER SHAPIRO:

5 Any redirect?

6 MR. ADAMS:

7 No, Your Honor.

8 HEARING OFFICER SHAPIRO:

9 Oh, I'm sorry, it's his redirect.

10 MR. McGUIRE:

11 Let me, if I could, just a couple of things.

12

13

REDIRECT EXAMINATION

14 BY MR. McGUIRE:

15 Q If I could ask him just a couple of questions.

16 There was some discussion about your trailer park,  
17 have you had trouble getting water at your trailer  
18 park?

19 A I even had trouble getting permit and me with  
20 one in my hand. We are still waiting on  
21 water, we have--Craig and I talked last week,  
22 they are working on the details of it as to  
23 when they can do it or how they are going to  
24 do it.

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MR. MCGUIRE:

That's all.

RECROSS EXAMINATION

BY MR. ADAMS:

Q But that, Mr. Walker, I think is because you had to get some other permits that is not related to the Water District?

A No, it had to be--to start with there was a problem through the Health Department, okay.

Q Yes, sir. But that was not under the Water District?

A That wasn't water plant problem.

Q Right.

A Now, we are working on the lots now and, just like I said, I talked to Craig last week and they are working on the details of what they will or can or want to do.

Q And Craig is working with you on that?

A Yes.

Q And that delay was just the Health Department?

A It wasn't the water plant delay on this last thing. Now, on the first section the water

1 plant put them in, I mean, put the taps in.

2 Mr. Crum took care of that.

3 Q No problem getting that done, was it?

4 A Not that I know of.

5 MR. ADAMS:

6 Okay, thank you.

7 MR. WUETCHER:

8 No questions.

9 HEARING OFFICER SHAPIRO:

10 Thank you. Is that the case for the--

11 MR. MCGUIRE:

12 I'm going to call some witnesses I think aren't  
13 here, but I'd like to call them, they were  
14 subpoenaed.

15 HEARING OFFICER SHAPIRO:

16 They were subpoenaed? Who did you subpoena that  
17 didn't appear?

18 MR. MCGUIRE:

19 The members of Martin County Water Board.

20 HEARING OFFICER SHAPIRO:

21 Were they served a subpoena?

22 A They were delivered to the Sheriff's Office  
23 yesterday, I was advised by phone they were  
24 served but I don't have the returns back.

1 MR. ADAMS:

2 If I please the court I can enlighten you. I'd  
3 advise the court they were--the Deputy Sheriff  
4 about quarter 'til four came by the water plant  
5 gave the subpoenas to Mr. Justice. Mr. Justice  
6 called me--and also I think the local counsel--and  
7 we--the Deputy Sheriff was advised that he would  
8 have to serve those people himself. Now, I don't  
9 know if he did that, I don't think he did, but he  
10 was advised that he had to do that. Because those  
11 people were not there, just--I think Mr. Cumbo and  
12 Mr. Justice were the only people there.

13 MR. MCGUIRE:

14 Your Honor, just for the record, I'd like to call  
15 those individuals and whenever I get the returns  
16 back--

17 HEARING OFFICER SHAPIRO:

18 Well, if they are not here, they are not here.

19 MR. MCGUIRE:

20 When I get the returns back from the Sheriff's  
21 Department I can file them and they speak for  
22 themselves.

23 MR. ADAMS:

24 I'm told, Your Honor, by Mr. Justice and he can

1 clarify it that after he was advised that he just  
2 scratched out the people's names and said he  
3 served Mr. Justice. And he was advised that  
4 wouldn't work.

5 MR. WUETCHER:

6 Your Honor, if it's any assistance to you, they  
7 probably will not be reflected in that record  
8 because the subpoenas were issued on Tuesday, late  
9 in the afternoon, and I believe delivered at the  
10 request of the complainant and--delivered by  
11 express mail to the complainant on Wednesday  
12 morning. So, the documents that are--will reflect  
13 both the request for the subpoenas and the  
14 transmittal letter including the subpoenas aren't  
15 in the main case file as of yet. They are still  
16 with the Commission's docket branch waiting to be  
17 filed.

18 HEARING OFFICER SHAPIRO:

19 I don't have any of the documents in here that  
20 they were required to file with the--that they  
21 were required to file in accordance with the pre-  
22 hearing order. For some reason that is not in the  
23 file. Were summaries of the testimony filed in  
24 this proceeding?

1 MR. WUETCHER:

2 Yes, sir.

3 HEARING OFFICER SHAPIRO:

4 The summaries of the testimony of the witnesses?

5 MR. WUETCHER:

6 The witnesses--the list of witnesses with exhibits  
7 and summaries of the--expected summaries of the  
8 testimony were all filed by both parties.

9 HEARING OFFICER SHAPIRO:

10 What witnesses did you intend to call, what are  
11 their names?

12 MR. McGUIRE:

13 John Triplett, Chairman Martin County Water Board;  
14 Anita Collier, Member of the Water Board; Nola  
15 Antle, Member of the Water Board; Herman Fletcher,  
16 Member of the Water Board; and John B. Estep,  
17 Member of the Water Board.

18 HEARING OFFICER SHAPIRO:

19 None of those people are here?

20 MR. McGUIRE:

21 I don't think so.

22 HEARING OFFICER SHAPIRO:

23 Is that correct Mr. Adams?

24

1 MR. ADAMS:

2 As far as I know, Your Honor, that is correct.

3 HEARING OFFICER SHAPIRO:

4 We know that they are not in the hearing room. Do  
5 you have any other witnesses?

6 MR. MCGUIRE:

7 No, Your Honor.

8 HEARING OFFICER SHAPIRO:

9 Okay. Then that's the case for the complainant  
10 except for those witnesses; is that right?

11 MR. MCGUIRE:

12 Yes, Your Honor.

13 HEARING OFFICER SHAPIRO:

14 We'll be in recess for ten minutes.

15 (OFF THE RECORD)

16 HEARING OFFICER SHAPIRO:

17 Mr. McGuire, you had indicated earlier prior to  
18 the break that you had subpoenaed members of the  
19 Water District's Board.

20 MR. MCGUIRE:

21 Yes, Your Honor.

22 HEARING OFFICER SHAPIRO:

23 And they are not here today. And you were not--  
24 you did not know whether or not those subpoenas

1 had been served on the individuals that have not  
2 appeared; is that right?

3 MR. MCGUIRE:

4 We were advised by the Sheriff's Department that  
5 they were individually served.

6 HEARING OFFICER SHAPIRO:

7 But you don't know?

8 MR. MCGUIRE:

9 But you have not received the service--the signed  
10 service that we get back in the mail, we have not  
11 received.

12 HEARING OFFICER SHAPIRO:

13 If they weren't served, what would be your  
14 position, if they were not served?

15 MR. MCGUIRE:

16 If they were not served, obviously, we didn't get  
17 them served that is our fault.

18 HEARING OFFICER SHAPIRO:

19 So, they will not be required to be here?

20 MR. MCGUIRE:

21 Certainly.

22 HEARING OFFICER SHAPIRO:

23 That's your position. What if they were served  
24 and they are required to be here?

1 MR. MCGUIRE:

2 If they were served I think they should have been  
3 here or they should have advised their attorney  
4 and he should have known about it and given some  
5 reasonable excuse why they were not here.

6 HEARING OFFICER SHAPIRO:

7 And if they are not--if, in fact, they were not  
8 served what would--assume they weren't--they were  
9 served what would be your next step then in this  
10 proceeding? What would you plan to do?

11 MR. MCGUIRE:

12 Well, if they were served and did not come and I  
13 receive that service back, I believe that we would  
14 be entitled to some presumption that their  
15 testimony would have helped us, especially since  
16 they are board members of the Martin County Water  
17 District. Obviously, it would be up to the  
18 court's discretion to decide how to proceed. But,  
19 certainly, when you have a case with the Martin  
20 County Water District board members are served,  
21 and if they have not talked to their attorney or  
22 if they have talked to their attorney and they  
23 haven't called and they haven't presented some  
24 reasonable excuse why they are not here, then the

1 court is entitled to strike part of the answer.  
2 You know, I think the court has to look at what  
3 solutions or what should be imposed in that  
4 situation, especially as to a board member.

5 HEARING OFFICER SHAPIRO:

6 Well, I don't know what you would strike in this  
7 particular situation. I mean, its either all or  
8 nothing, you either get the line or you don't get  
9 the line. If they were to testify or to offer  
10 evidence that you think would be favorable to your  
11 position, what do you think that evidence would  
12 have consisted of?

13 MR. MCGUIRE:

14 Well, obviously, I'm not in a position to know  
15 what they would have said.

16 HEARING OFFICER SHAPIRO:

17 Well, let's assume that you know what you would  
18 have asked them. Let's assume that they had  
19 answered everything that you had asked them or  
20 that you planned to ask them in a manner that was  
21 favorable to your position, what do you think they  
22 would have said that would have helped your  
23 position?

24

1 MR. McGUIRE:

2 I think that they would have--I hope that they  
3 would have said that the Superintendent had failed  
4 to keep them informed in this matter, that he  
5 apparently maneuvered the situation so Mr. Crum  
6 would not get water, that they had not been  
7 advised to the situation, that under their  
8 policies and procedures and the way other people  
9 are treated Mr. Crum should have gotten water. I  
10 would have expected them to testify as to the  
11 prior problems at the Martin County Water District  
12 and how Mr. Cumbo may have been implemented--  
13 implicated in some of those as far as who signs  
14 the sheets, the great animosity between the two  
15 individuals, the political changes that took place  
16 after his twenty some years of service on the  
17 water board.

18 HEARING OFFICER SHAPIRO:

19 Well, as far as the incident that, the facts of  
20 the incident itself, that you maintain created  
21 animosity towards Mr. Crum, and I assume there was  
22 some animosity from Mr. Cumbo's testimony, and I  
23 guess if someone says that you are doing something  
24 dishonest you would react adversely. I think that

1 would be a fair inference or assumption to make.  
2 But what Mr. Cumbo said was they--what he said, as  
3 I recall his testimony, was that the employee was  
4 accused, number one, of working less hours than  
5 she was paid for. And that accusation was based  
6 upon the time cards that the employee submitted  
7 for her pay, that was used for the basis of her  
8 pay. And that, in fact, the time cards did not  
9 accurately reflect the exact time she was at the  
10 plant board or whatever it is I assume they have  
11 an office somewhere, but it did represent the time  
12 that she spent, this was his testimony, because  
13 she would do time--she would actually make up the  
14 work at home or come in without clocking in. So,  
15 that even though the time cards did not reflect  
16 the actual time she spent, they did reflect at  
17 least the amount of time she had expended on  
18 behalf of the Water District. How do you think  
19 they testimony would be different from that? What  
20 would you expect--how would you expect their  
21 testimony to be different from that? Or would you  
22 expect their testimony to be different from that?

23 MR. MCGUIRE:

24 If I can elaborate a little bit, I guess that was

1 the defense that the lady took and that Mr. Cumbo  
2 supported, was that she had done work at home.  
3 Obviously, if we have a lot of state employees  
4 here clocking in and are not in their office--  
5 nobody really knows if she did any work.

6 HEARING OFFICER SHAPIRO:

7 We're talking about testimony here, not really--

8 MR. MCGUIRE:

9 But as far as their testimony I would just--you  
10 are right, they would have maybe not agreed with  
11 the conclusion but would have corroborated that  
12 and talked about the animosity between the two,  
13 and been somewhat surprised that there has been  
14 this problem with Mr. Crum getting water, not been  
15 fully informed of the facts. Certainly, if I had  
16 gone through their answer that was filed on behalf  
17 of the Martin County Board I think many of those  
18 members would have been surprised to different  
19 parts of their answer and said that is totally  
20 untrue. I don't know what basis there is to  
21 support that. They may have even testified  
22 against the allegations in the answer that was  
23 filed on behalf of the water board.

24

1 HEARING OFFICER SHAPIRO:

2 If it develops that the individual members were  
3 served, do you intend to file a written motion?

4 MR. MCGUIRE:

5 Yes, Your Honor.

6 HEARING OFFICER SHAPIRO:

7 And in that motion are you going to ask that the  
8 Commission interpret their non-appearance to mean  
9 that they would have offered the evidence that you  
10 have characterized just now?

11 MR. MCGUIRE:

12 Well, of course, if the claimants prevail in this,  
13 it makes the issue moot. Obviously, there is no  
14 motion to be filed.

15 HEARING OFFICER SHAPIRO:

16 Well, let's not--

17 MR. MCGUIRE:

18 If, based upon the evidence, they prevail on the  
19 issue, it is a moot issue.

20 HEARING OFFICER SHAPIRO:

21 You will know this before you are going to get  
22 anything back from the Commission. You will know  
23 as soon as you get back to Inez or by tomorrow at  
24 the latest.

1 MR. MCGUIRE:

2 I can proceed however the court would so direct  
3 me.

4 HEARING OFFICER SHAPIRO:

5 Well, I'm just asking you how you intend to  
6 proceed so we'll have someone here.

7 MR. MCGUIRE:

8 Whatever direction the court would give me on how  
9 to proceed on that. If you think a motion would  
10 be appropriate, I can do that. If the court would  
11 like for me to proceed in some other way,  
12 obviously, where board members are served, if, in  
13 fact, that is the case, on a hearing before this  
14 Commission, before the Public Service Commission,  
15 then there should be some remedy, and I could  
16 suggest to the court remedies but somehow there  
17 should be some remedy for a board member being  
18 served and ignoring the subpoena to testify.

19 HEARING OFFICER SHAPIRO:

20 Well, there may be, but that is--that would be  
21 apart from this proceeding. I mean, that has  
22 nothing to do with what we are facing here today.

23 MR. MCGUIRE:

24 Yes, sir.

1 HEARING OFFICER SHAPIRO:

2 What I'm trying to determine is how--I'm trying to  
3 get a sense of what you intend to do if, in fact,  
4 they were served so that we will be prepared to  
5 address it in an appropriate manner. That's my  
6 main concern at this point. Now, whether or not  
7 they violated the Commission Rule or Regulation or  
8 will be subject to sanctions, that is something  
9 that is totally separate from this proceeding, as  
10 far as I'm concerned. I mean, it is related but  
11 it would have to be a separate, I think a separate  
12 proceeding.

13 MR. MCGUIRE:

14 How has the Commission handled this type issue in  
15 the past?

16 HEARING OFFICER SHAPIRO:

17 Well, I don't know that we have had this in the  
18 past. Do you know of any situations?

19 MR. WUETCHER:

20 No, the only situation that might be similar would  
21 be when summoned witnesses had been unavailable,  
22 the proceedings were kept open in order to permit  
23 some type of motion and to allow reconvening of  
24 the hearing in order to hear the missing

1 witnesses.

2 HEARING OFFICER SHAPIRO:

3 Yes.

4 MR. MCGUIRE:

5 And, certainly, if they had directed their  
6 attorney to file such a request--

7 HEARING OFFICER SHAPIRO:

8 Well, it wouldn't be--it would probably be at your  
9 request. In other words, what we would do is if--  
10 what the Commission would do then, as Mr. Wuetcher  
11 said, is keep the matter open. But when I look at  
12 what you are asking for it seems to me that--well,  
13 that would probably be the best--I was wondering  
14 if, in fact, you could offer what their testimony  
15 would be but--like you would do in a court. If  
16 the witness doesn't appear at a trial then the  
17 party can always say this is what the witness  
18 would have testified to if the witness had been  
19 present. And the other side has the option of  
20 either agreeing to that and accepting that or  
21 asking for a continuance of the hearing or the  
22 trial. But the court, you know, that allows the  
23 proceeding to go forward and come to--without  
24 undue delay. But I don't know that--

1 MR. ADAMS:

2 If it please the court--

3 HEARING OFFICER SHAPIRO:

4 Except I'm not a court, by the way.

5 MR. ADAMS:

6 I don't know how to address you then.

7 HEARING OFFICER SHAPIRO:

8 I don't either.

9 MR. ADAMS:

10 Mr. Justice tells me that after the deputy was  
11 told last night that he would have to serve them  
12 personally--

13 HEARING OFFICER SHAPIRO:

14 Well, I understand that, that is not the question.  
15 The question is this is--I'm saying what if, in  
16 fact, they were served. If they weren't served,  
17 then we have no problem. They weren't served?

18 MR. JUSTICE:

19 Sir, they were not served.

20 HEARING OFFICER SHAPIRO:

21 That doesn't--again--

22 MR. JUSTICE:

23 I'm sorry, I'm a little thick.

24

1 HEARING OFFICER SHAPIRO:

2 But if they were, in fact, served, then we do have  
3 a problem. But I guess we can wait until the  
4 problem--wait to see whether we have a problem,  
5 and we will know if we have a problem if you file  
6 a motion. And I would suggest you do it in a  
7 written form.

8 MR. MCGUIRE:

9 Your Honor, could I be allowed to--the last  
10 witness you asked him several questions about  
11 their plans and alternative financing on how many  
12 lots. And, actually, my client, John Crum,  
13 informed me he knew more about that than Mr.  
14 Walker did.

15 HEARING OFFICER SHAPIRO:

16 Well--

17 MR. MCGUIRE:

18 And I wonder if I could recall him just to clarify  
19 that point.

20 HEARING OFFICER SHAPIRO:

21 Well, I think the information that the witness  
22 gave will probably be sufficient for our purpose  
23 at this point, so let's go on to the other--to the  
24 Defendant's side.

1 MR. ADAMS:

2 I call Bob Taylor.

3 (WITNESS DULY SWORN)

4

5 The witness, ROBERT E. TAYLOR, JR., having first  
6 been duly sworn, testified as follows:

7

DIRECT EXAMINATION

8 BY MR. ADAMS:

9 Q How are you employed Mr. Taylor?

10 A I work for PBR Engineers, Incorporated.

11 Q How long have you worked for them?

12 A For 11 years.

13 Q And what do you do for them?

14 A My project--I'm a Project Manager.

15 Q Very briefly, what is a Project Manager?

16 A I work with clients such as Martin County Water  
17 District, coordinate their projects and coordinate  
18 all the efforts and disciplines within the--our  
19 office in order to complete civil engineering  
20 projects for them.

21 Q And how long have you done that type of work?

22 A For about 13 years.

23 Q I believe you have been employed or your  
24 company has been employed by the Martin

1 County Water District for how many years?

2 A I believe we started in '88 with the Martin County  
3 Water District.

4 Q And, of course, you know Mr. Crum, the former  
5 Chairman?

6 A Yes.

7 Q And you know the other people here?

8 A Yes.

9 Q And I want to show you a letter written by Holly  
10 Nicholas and yourself with cost estimates and just  
11 very briefly what are those about?

12 HEARING OFFICER SHAPIRO:

13 Let's--before you testify have those  
14 been introduced into the record?

15 MR. ADAMS:

16 No, Your Honor, they have not, I'm going  
17 to introduce them, they would be--

18 HEARING OFFICER SHAPIRO:

19 Let's mark them for identification.

20 MR. ADAMS:

21 Yes, Your Honor, Defense Exhibit 10, 11.

22 HEARING OFFICER SHAPIRO:

23 No, it would be Defendant's Exhibit  
24 Number 15, 16.

1 Q I'll show you what has been marked Defense  
2 Exhibit 15, 16, 12 for identification, and  
3 ask you are those--what are those four  
4 columns?

5 HEARING OFFICER SHAPIRO:

6 Let's take them one at a time.

7 Q What is the first one?

8 A Exhibit Number 15 is a letter dated April 23,  
9 '98, from Holly Nicholas, funding specialist  
10 at PDR Engineers.

11 Q Very briefly, what is the substance of that  
12 letter?

13 A I had a discussion with Mr. Crum early I  
14 guess in '98 and he advised me that they were  
15 considering a development known as Eden West  
16 and wanted me to take a look at the  
17 possibility of what it would take to run  
18 water service to that development.  
19 Originally, he had inquired as to whether it  
20 would be possible to include it as a part of  
21 another extension project that the Water  
22 District did. He made that request, I said I  
23 did not know but I would get back with the  
24 funding specialist at PDR and this is the

1 response that she wrote to Mr. Crum relating  
2 to that request as to whether it could be  
3 included in an ongoing extension project.

4 Q And I think it was determined it could not?

5 A That is correct.

6 Q Now, what is the next piece of correspondence?

7 A The next piece of correspondence is a letter  
8 dated June 11, '98, from myself to Mr. Crum.  
9 And this was a follow-up on his request for  
10 us to take a preliminary look at the  
11 development and give him a preliminary cost  
12 estimate for water service for the  
13 development.

14 Q I guess you and Mr. Crum had several conversations  
15 about that?

16 A Several.

17 Q Now, we have got Exhibit Number 1 which is an  
18 aerial over there. In terms of how that  
19 would be done was there ever--what was your  
20 recommended solution, I guess?

21 A Well, in just driving and looking at the area  
22 of the development it appeared that the  
23 elevations in this area varied quite a bit.  
24 And we thought because of the high elevation

1 and the extent of the area to be developed  
2 that the best source of water for pressure  
3 would be from the--what is known as the  
4 Marcus Wells tank. And it sets, I guess, to  
5 the west of this property.

6 Q That is the tank--that's the west--that's the  
7 tank?

8 A That is correct.

9 Q It's marked on the aerial.

10 A Yes.

11 Q And why was that the best?

12 A Because the overflow elevation on the Marcus  
13 Wells tank is, I believe, 1165. And in just  
14 quickly reviewing some of the elevations in  
15 the development area it appeared that they  
16 could be anywhere from 650 to 800, possibly  
17 even higher than that looking at a topo map.  
18 And we determined that it would be best to  
19 serve that area totally from the Marcus Wells  
20 tank.

21 Q And he was in agreement with that?

22 A Yes.

23 Q Did he--did you and Mr. Crum ever have any  
24 discussion about trying to service that area

1 from the Route 3 side?

2 A I don't recall specifically. I think it  
3 could have been mentioned, but we determined  
4 at that point that the pressure probably  
5 would not be sufficient to serve the entire  
6 area from the Route 3 because of the  
7 elevations.

8 Q Was there any discussion about even any line  
9 at all from Route 3?

10 A Not that I recall.

11 Q Now, I think at my request did you check the  
12 elevations on the Marcus Wells tank?

13 A I checked our records related to the overflow  
14 elevation, yes.

15 Q Okay. And what was that determined to be?

16 A I believe it is 1165.

17 Q And now I believe the Route 3 is serviced  
18 from the Inez tank?

19 A That's correct.

20 Q What was the overflow elevation on it?

21 A There is two tanks located in downtown Inez  
22 and I believe both of those are overflow  
23 elevations of 860.

24 Q Now, I'm sure the Hearing Officer here is

1 familiar with these things. But in case  
2 someone might read this record like me who  
3 isn't, do you have to have some extra footage  
4 beyond what the tank in order to service an  
5 area? That is, you have 800 foot elevation,  
6 would an 800 foot tank service that?

7 A No.

8 Q Why?

9 A We use as a rule of thumb when you are going  
10 out in the development of a project that we  
11 use just generally a 100 feet more in  
12 elevation than the highest resident that you  
13 are trying to serve. And, roughly, that  
14 would give you, depending on--it varies,  
15 depending on how far away you are from the  
16 tank and line losses and that sort of thing.  
17 But that will give you somewhere in the 40 to  
18 50 pounds, 40 to 45 pounds just with the 100  
19 feet in elevation.

20 Q At my request, did you review some topo  
21 sheets of elevations?

22 A Yes.

23 Q Now, based on the elevation of those tanks and  
24 those topographical sheets, would the pressure be

1 30 pounds psi at the very mouth of the Eden Branch  
2 Hollow, can you do that? Let me reword the  
3 question. The Public Service Commission requires  
4 30 psig, as I understand, is that your  
5 understanding?

6 A That's correct, yes.

7 Q Now, if you service the entire subdivision  
8 from the Marcus Wells tank I think you would  
9 be adequate?

10 A Yes.

11 Q It would give you adequate fire protection?

12 A Yes, it should.

13 Q It should?

14 A We have not run any calculations or  
15 hydraulics on that at this point. Everything  
16 that we have done simply has been very  
17 preliminary at this point.

18 Q Okay, based on preliminary?

19 A Yes.

20 Q Now, if you service this instead from the Inez  
21 tank vis-a-vis the Route 3 line, would you have  
22 adequate pressure for the entire subdivision?

23 A I don't believe so, no.

24 Q Would you have adequate pressure just right

1 at the very mouth of the hollow?

2 A I would say at the--as you go in at the mouth  
3 of the hollow on the lowest elevation you  
4 probably would have adequate pressure.

5 Q But above that you would start to lose  
6 pressure?

7 A That's correct.

8 Q And if you go again on the Route 3 side what  
9 about the fire protection, would you have  
10 adequate pressure for fire protection?

11 A I doubt it.

12 Q So, at most, on the Route 3 side you could  
13 service the residence in the lower--lowest  
14 area, that could probably be done?

15 A Yes.

16 Q Any higher elevations probably would get to  
17 be a problem and then none of that would have  
18 any fire protection?

19 A That's correct.

20 MR. ADAMS:

21 That's all I have.

22 HEARING OFFICER SHAPIRO:

23 Any questions?

24

1 MR. MCGUIRE:

2 Yes, sir.

3

4

CROSS EXAMINATION

5 BY MR. MCGUIRE:

6 Q The elevation readings that were taken for other  
7 customers substantially exceeded the 100 foot  
8 limit you have testified to and you have heard the  
9 Superintendent testify that all those residents  
10 had 30, 40 or even 50 pounds of pressure, why is  
11 that?

12 A I have no idea at this point. You have to  
13 go through--there is a lot of factors that  
14 can come into play related to pressures and  
15 flows that you have on a water system and  
16 depending on the number of customers and line  
17 losses that you may have and that sort of  
18 thing. It is--I still think that that at the  
19 lower elevations there at the mouth of the  
20 hollow that you could probably have 40 to 50  
21 pounds, probably, in that lower level. But  
22 as you start climbing in elevations I think  
23 that would quickly drop below the minimum.

24 Q And, certainly, anybody that had water in

1 this area, if it was just a matter of a few  
2 feet, could put their own pump station in to  
3 pump it just a short distance as Mr. Priest  
4 did?

5 A That's correct.

6 MR. MCGUIRE:

7 That's all.

8 HEARING OFFICER SHAPIRO:

9 Mr. Wuetcher.

10 MR. WUETCHER:

11 Just a few.

12

13 CROSS EXAMINATION

14 BY MR. WUETCHER:

15 Q Good afternoon.

16 A Good afternoon.

17 Q You've been working with the Martin County Water  
18 District for the last ten years?

19 A Yes.

20 Q Have you assisted them in their development  
21 of their procedures for subdivision  
22 development?

23 A They--when this came up they asked if any of  
24 the other clients that we dealt with had

1 procedures in place and if we could provide  
2 any information to them related to the  
3 procedure. And I took one that we had worked  
4 with the City of Hardinsburg down in  
5 Breckinridge County, has a similar rural type  
6 system that Martin County does, and gave them  
7 a copy of the procedures that they had used,  
8 just as information.

9 Q Do you provide engineering services for any  
10 other utilities that are subject to Public  
11 Service Commission jurisdiction?

12 A Yes.

13 Q Can you give us a sample of some of those  
14 clients?

15 A We work for Mountain Water District in Pike  
16 County, we've got a funding application for  
17 the Mud Creek Water District in Floyd County.

18 Q Do you know if any of those water district  
19 have any type of procedures for subdivision  
20 development?

21 A Not that I'm aware of.

22 MR. WUETCHER:

23 Thank you. That's all I have.

24

1 HEARING OFFICER SHAPIRO:

2 Thank you Mr. Taylor. Any other witnesses?

3 MR. ADAMS:

4 No, Your Honor, I think that's it. Let me just  
5 check, I don't think there is any--I think that is  
6 it Your Honor.

7 HEARING OFFICER SHAPIRO:

8 Do you want to file briefs in this case or do you  
9 want to make closing arguments, or do you want to  
10 do both or none? It's up to you.

11 MR. MCGUIRE:

12 Your Honor, I'd like to make a very brief closing  
13 argument and suggest it be submitted on the  
14 record.

15 MR. ADAMS:

16 Would a brief be helpful to you, do you think?

17 HEARING OFFICER SHAPIRO:

18 It's up to you, whatever you think is in your best  
19 interest.

20 MR. ADAMS:

21 I think probably just--I probably tend a very  
22 brief closing.

23 HEARING OFFICER SHAPIRO:

24 Okay. Why don't we take about 15 minutes, give



1 serviced off of the Route 3 area. The core, I  
2 think, correctly to do--the other problem we have  
3 if we run a line into that subdivision what is  
4 going to happen they are going to have to sell a  
5 number more lots in order to be able to hook onto  
6 that Marcus Wells tank. As they go up in that  
7 elevation then the pressure is going to become a  
8 problem for them and unless they have the ability  
9 to furnish the water they are not going to be able  
10 to sell the lots, it's a chicken and egg. And I  
11 think the court correctly discerned that that  
12 creates a very practical problem. They never met  
13 the requirements of the Board in order to set up a  
14 subdivision. I think the minutes will show that  
15 the subdivision(sic) actually adopted those in  
16 April. Now, you might say, well, they were not  
17 approved by the PSC, as it turned out this  
18 afternoon, that is correct. But my reply to that  
19 is Mr. John Crum was Chairman on those minutes, he  
20 was present and I don't think that he should be  
21 allowed to come in here and say we are not bound  
22 by those regulations although I was the presiding  
23 individual at that time. The--we get--what we are  
24 concerned about is not the few houses at the mouth

1 of Cale Branch or Eden West Hollow, I think  
2 everybody agrees that that can really--there is  
3 enough pressure to do those houses, or at least  
4 possibly enough pressure to do the houses. What  
5 we want to avoid is they put the line in, they  
6 hook on, they give the Water District the line,  
7 then they sell other houses and then we are back  
8 down here before the PSC again where some  
9 purchaser who is higher up in elevation says, gee,  
10 I bought this lot and I hooked on to the line that  
11 now belongs to the Martin County Water District  
12 and I only get ten pounds of pressure. I want  
13 some relief. The only way you would get that  
14 relief would be to go to the Marcus Wells tank.  
15 The Water District does not have the resources to  
16 fund that whole subdivision development. That  
17 should have been the developer. And what we are  
18 concerned about is getting stuck with--because  
19 once those lots are sold off, I'm going to  
20 guarantee you they are going to take the view that  
21 is the Water District's problem now, that is not  
22 our problem, and that is the real concern here  
23 because it is obvious that is what they are doing.  
24 There is some discussion about any--about other

1 people having the service. Again, those other  
2 individuals are not subdivisions, they are not  
3 people actively trying to sell lots off. So, that  
4 is our concern and that is really our concern that  
5 we don't get hooked into those development costs.  
6 Now, Mr. Cumbo indicated if they want to tap on to  
7 the line and we would not assume any  
8 responsibility for the development of the  
9 subdivision that we can handle, but we cannot get  
10 saddled with the cost of \$211,000 to fund the  
11 subdivision. And that is what I really think is  
12 going to happen because there is no way they can  
13 develop that subdivision. They are going to go up  
14 that hill, sell off lots, won't be water from  
15 Route 3, and then we are back here again on  
16 somebody else. So, I think that is really the  
17 thrust of our concern about this. And I really  
18 don't see any point in taking up more time on it  
19 because I think you pretty well have a grasp on  
20 the issues. Under the Regulations we have to  
21 maintain the 30 pounds per square inch and if we  
22 don't we are going to be down here again. So, I  
23 think that is--so we think it ought to be denied,  
24 or if it is not denied I think, and I don't know

1 what the Commission's authority here is, limit it  
2 to where we will have no obligation to guarantee  
3 the 30 psi on the five or six houses they want and  
4 we would have no obligation to--for any further  
5 service to other lots in that area. So, we just  
6 don't want to be back down here again with another  
7 lot owner, is what the big problem is with this.  
8 Thank you.

9 HEARING OFFICER SHAPIRO:

10 Mr. McGuire.

11 MR. MCGUIRE:

12 Thank you, sir, Mr. Adams. I think their approach  
13 speaks for itself, they are very vindictive toward  
14 Mr. Crum and that is very clear. You know, even  
15 when Mr. Wright, the Manager of the Water  
16 District, stood over here and said, really, I  
17 don't see why we couldn't agree to give the six  
18 taps if they would agree that would be all. And I  
19 said, well, that's it, that's all we were asking  
20 for anyway, let's all go home. Let's get summary  
21 judgement. The attack by the water board in this  
22 is politically motivated, it is obvious Mr. Crum  
23 worked with the water board 21 years, he served as  
24 Chairman 18 years. Mr. Walker was on the water

1 board for I think over 15 years, maybe 20 years.  
2 These are gentlemen that really gave a lot of  
3 their time to build this water company up and  
4 political changes happened. Some people get  
5 kicked off and some people put on. If Mr. Priest  
6 needed water at an elevation of 805, they got  
7 water to him on a one inch line and they didn't  
8 make him come to the Public Service Commission.  
9 And this--and Benton Crum, he is not trying to  
10 sell his house, that's where Benton Crum and his  
11 wife and his five year old son have lived since  
12 the house was built, but they wouldn't give any  
13 water because of the vindictiveness of the  
14 political system in Eastern Kentucky. That's the  
15 way we do business up there. If you are not on  
16 the right side, we kick your butt. And that is  
17 exactly what is--Benton is caught up in it. If it  
18 had been anybody else with a name other than Crum,  
19 they would have had water right now. They went to  
20 the expense of \$25,000 to run actually two lines.  
21 They ran a five inch line with a three inch inside  
22 of it, should be more than enough. And they ran a  
23 six inch sewer line and ran it under the road and  
24 ran it all the way to the creek. I mean, if it is

1 just a matter of running it a few more feet, they  
2 would do that too, run it all the way up to 3.  
3 That wasn't the question. That is not an option  
4 they were given. And nobody ever said, well, if  
5 you can prove or if you can check and show that  
6 the pressure is there. But their engineer did say  
7 at an elevation that the water tank was 860 and  
8 Benton, the elevation at Benton's is 760, 100  
9 feet, just exactly what he said that you needed,  
10 760, even though Priest is 805 and Bobby Hall was  
11 825. Mr. Walker's property, which would be more  
12 like where John Crum would like to build his  
13 residence is at 640. Substantially--there is no  
14 reason they can't supply water at 640. And the  
15 only reason we are here is because of politics of  
16 eastern--mountain politics and that's why we are  
17 here, that is why the vindictiveness, that's why  
18 the witnesses were attacked, that's why there has  
19 been no communications, because they won't talk to  
20 our people. Our people are outcasts, they were on  
21 the wrong side of the election for mayor, and it  
22 didn't matter how many years you served on the  
23 water board. And some people have some hard  
24 feelings over the incident. There were

1           accusations, maybe true, maybe untrue, there was  
2           some investigation, there is a lot of hard  
3           feelings about that. Had it been anybody else,  
4           you are right, I don't think we would have been  
5           here. The case they want to try is not the case  
6           that we came here for. We came here on six lots,  
7           they want to try the case on seven to 110. There  
8           has been discussions to this development for over  
9           ten years and knowing Eastern Kentucky they may be  
10          discussing developing this property in another 10  
11          years. I do know they are talking to Kentucky  
12          Housing Authority about getting some assistance  
13          and maybe being able to develop the whole thing at  
14          the 210 and they would certainly like that. And  
15          those are alternative financing and government  
16          projects they could apply for. Those are things  
17          they can work on. The question that we have here  
18          before us today what we filed our complaint on was  
19          six taps, asked for six lots, two of which have--  
20          one which has a residence on it right now. Mr.  
21          Walker's property which has got a partially  
22          completed house and Mr. Crum's property where he  
23          would like to build his residence that he would  
24          want to live in. I think Craig Justice was a very

1 honest witness in this case and he really couldn't  
2 give the court any reason why those taps weren't  
3 granted or any reason really why they couldn't sit  
4 down and talk to them about it. The animosity  
5 between Niles and between Mr. Crum is the only  
6 thing that has kept this project or kept these  
7 people from being treated consistently as other  
8 customers had. As the Commission has pointed out  
9 here, this water company is probably operated  
10 pretty loose and not followed the rules very close  
11 but, really, they just got along with people. If  
12 somebody had a problem they would go out and talk  
13 to them and work it out and nobody ever had to  
14 file a complaint. And isn't it unusual that the  
15 first complaint filed with the Public Service  
16 Commission is by the former Chairman for 20 years.  
17 They want to enforce a procedure that obviously  
18 was not lawfully adopted and is being applied in a  
19 very vindictive way towards Benton Crum and his  
20 wife and his five year old child. That is not the  
21 way. I don't think anybody would intend that  
22 policy to apply. The tone of counsel in this case  
23 I think speaks for itself, the animosity between  
24 the parties and why this thing has not been

1 resolved or was not resolved at lunch time, after  
2 the testimony of Craig Justice, the Manager in the  
3 case. We asked that there be a ruling, that the  
4 Martin County Water District should have  
5 cooperated with these gentlemen, that they should  
6 be provided water taps, that they have done  
7 everything consistent. If there is any little  
8 thing to be done, they would do it, but they need  
9 at least to be told this is what you have got to  
10 do to get these six taps. And that's all we are  
11 asking for is the six taps. We didn't come here  
12 to try 110 cases and we're not asking that Martin  
13 County supply the 110 lots that may never be  
14 developed, and they know that. But it is the only  
15 straw--if you look at their answer they listed at  
16 least 27 different reasons why these taps were not  
17 provided. And most of them were--went up as shaft  
18 in the wind when you shuck corn as we went through  
19 the testimony. If you look at their answer versus  
20 the testimony, versus the bottom line closing  
21 argument, you see how it was like a shotgun.  
22 First of all, it was, well, you didn't bring it  
23 within 200 feet, you didn't bring it within 50  
24 feet, and you hadn't had the line pressure

1 checked, and you hadn't found out if they are  
2 sterile, but then we don't know what the pressure  
3 is, but we haven't checked the elevations, but the  
4 elevations are wrong. If you go through their  
5 answer all the things they listed why and then  
6 look what it really came down to. It was just  
7 like a shotgun, we'll blame the Crums for  
8 everything. We will blame the Crums for every  
9 possible thing because we just don't want to give  
10 them water. And if we give it to them, you are  
11 going to make us, and that is the only way they  
12 are ever going to get it. Thank you.

13 HEARING OFFICER SHAPIRO:

14 I thank everybody for coming here. That will  
15 conclude the hearing and the court reporter will  
16 prepare a transcript of the proceedings today.  
17 When the transcript has been filed with the  
18 Commission then the matter will be submitted for  
19 their review and determination. The hearing is  
20 adjourned.

21 (OFF THE RECORD)

22  
23  
24

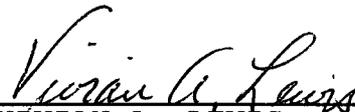
CERTIFICATE

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STATE OF KENTUCKY )  
COUNTY OF FRANKLIN)

I, VIVIAN A. LEWIS, a Notary Public in and for the state and county aforesaid, do hereby certify that the foregoing testimony was taken by me at the time and place and for the purpose previously stated in the caption; that the witnesses were duly sworn before giving testimony; that said testimony was first taken down in shorthand by me and later transcribed, under my direction, and that the foregoing is, to the best of my ability, a true, correct and complete record of all testimony in the above styled cause of action.

WITNESS my hand and seal of office at Frankfort, Kentucky, on this the 21st day of September, 1999.

  
\_\_\_\_\_  
VIVIAN A. LEWIS  
Notary Public

*Virian A. Lewis*

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